

### Office of Inspector General Report of Audit

### Final Report of Audit on the Establishment of the National Environmental Supercomputing Facility in Bay City, Michigan

E1BMF4-22-0359-6100306

September 30, 1996





Inspector General Division Conducting the Audit:

Mid-Atlantic Division
Washington Branch Office

**Program Offices Involved:** 

Office of Administration and Resources Management

Office of General Counsel



#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

#### SEP 30 1996

THE INSPECTOR GENERAL

#### **MEMORANDUM**

SUBJECT: Final Report of Audit on the Establishment of

the National Environmental Supercomputing Center

in Bay City, Michigan

Audit Report Number E1BMF4-22-0359-6100306

TO:

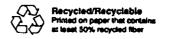
Fred Hansen

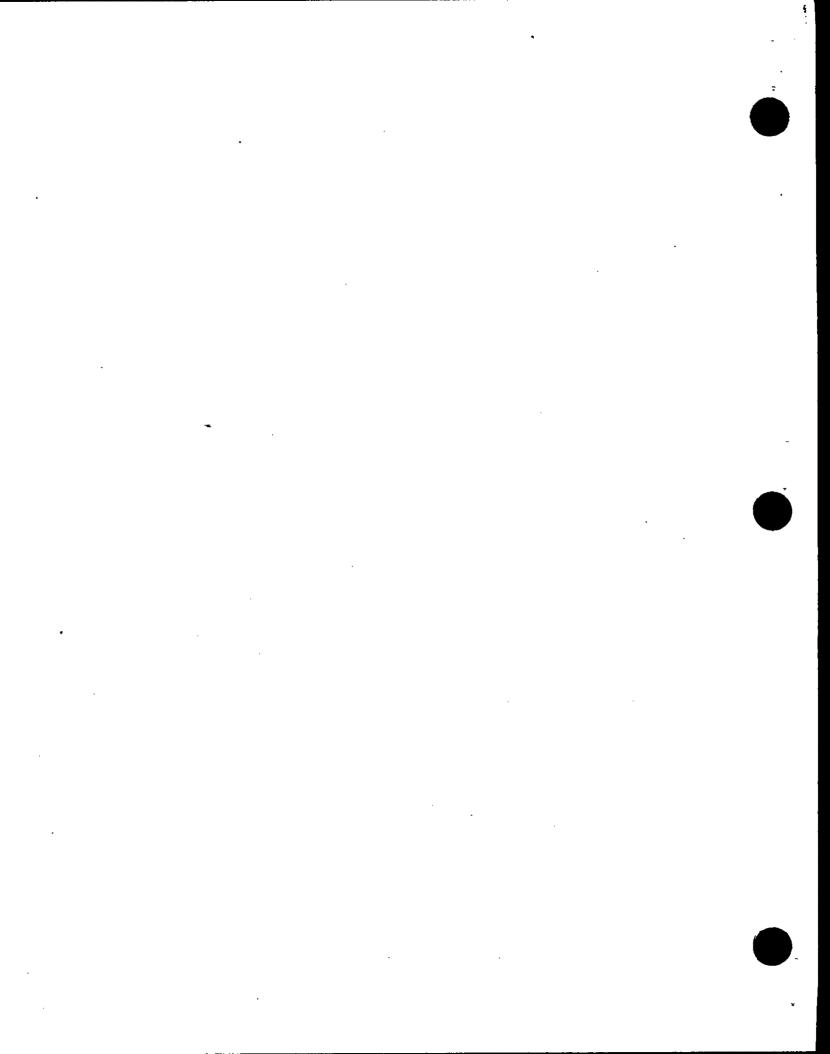
Deputy Administrator

Attached is our audit report entitled "Establishment of the National Environmental Supercomputing Center (NESC) in Bay City, Michigan." The purpose of this audit was to determine whether EPA complied with laws and regulations and whether excessive costs were incurred in the establishment of the NESC facility. We have designated you as the Action Official for this report, because of the serious concerns we have with respect to the integrity of the process and the direct involvement of Agency senior managers in the establishment of the NESC facility.

We found that EPA bypassed the General Services Administration (GSA) and the intent of several laws by using an Agency contractor to acquire the building that would house the supercomputer. The Agency did not have the specific legislative authority to obtain office space independent of GSA. Also, Agency managers pre-selected the supercomputer site and then manipulated the procurement process in order for the EPA contractor to lease the desired building. EPA, by exceeding its authority, paid about \$3.8 million more to lease and renovate the building then it would have cost to purchase such a building outright. In addition, Agency officials failed to make and retain documentation of significant decisions and activities relating to the establishment of the facility. The absence of proper in-house records not only impeded our audit effort, but required us to use subpoenas to obtain records. Therefore, the majority of the records we used during the audit to reconstruct the establishment of the NESC were provided through subpoenas issued to contractors, subcontractors, and other organizations not by EPA.

The Acting Assistant Administrator for Administration and Resources Management (AA-OARM), in responding to the draft audit report was concerned over the Agency creating the appearance of pre-selecting the building to house the supercomputer; and over the Agency's inappropriate handling of official Government documents. The Acting AA-OARM disputed





many of our findings, while at the same time agreeing to implement the majority of the report's recommendations. Most of the findings disputed revolved around our and the Agency's different interpretation and reading of laws, regulations and which documents should have been used for final Agency decisions. The Agency has stated that the Conference Report contained contradictory instructions about where the supercomputer was to be located: in Bay City or in the Bay City vicinity. While we believe the Conference Report was not contradictory we based our position on the language contained in the Agency's Appropriation Act (Public Law 101-507) which stipulated that the supercomputer would be located in the "Bay City area."

Also, the Acting AA-OARM strongly disagreed that EPA violated the Antideficiency Act when it ordered that the Bay City building lease run longer than the available appropriation. The Agency contends that it was not a party to or bound by the lease for the building and the contract between the EPA prime contractor and its subcontractor did not legally obligate EPA. Under different circumstances, we might agree with the Agency's position. However, we believe subsequent events confirm what the Agency's intentions were at the time the lease was executed. First, the solicitation for the follow-on contract advised potential bidders to factor in early termination costs should it (the contractor) choose to relocate the supercomputer to another facility. Also, EPA incorporated into the follow-on contract a lease assumption clause. We believe the above actions reflect what EPA intended to do all along. That is, an EPA cost reimbursement contractor would lease the space which effectively would obligate the Agency for lease payments throughout the entire 5 year lease. The Comptroller General has held such termination liability violates the Antideficiency Act because it represents the cost of future years' needs.

#### **ACTION REOUIRED**

The recommendations contained in this report are addressed to either you or the Acting AA-OARM. As we said earlier, we have designated you as the Action Official for this report, because of the serious concerns we have with respect to the integrity of the process and the direct involvement of Agency senior managers in the establishment of the NESC facility. We believe Agency senior managers need to be held accountable for actions that encourage or condone the circumvention and manipulation of laws and regulations. Therefore, we have recommended that you review the involvement of senior management in the establishment of the NESC facility and determine whether there were any employee conduct violations and whether disciplinary action is warranted. We request that you respond directly to all recommendations addressed to you. At your discretion, a separate response by the Acting AA-OARM addressing the recommendations addressed to him is acceptable.

Following EPA Order 2750, we request that you provide this office with a written response to this report within 90 days of the final report date. The response should include an action plan with milestone dates for corrective actions planned but not completed. This report

. . , : • • represents the opinion of the OIG. Final determinations on matters in this report will be made by EPA senior managers according to established EPA audit resolution procedures. Accordingly, the findings contained in this audit report do not necessarily represent the final EPA position.

We have no objections to the further release of this report to the public. Should your staff require additional documentation, or have any questions regarding this report, please have them contact Elissa R. Karpf, Deputy Assistant Inspector General for Acquisition and Assistance Audits on 260-4175, or Kenneth Prather, Supervisory Auditor, Washington Contracts Division, on (703) 308-8242.

John C. Martin

Attachment

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#### **EXECUTIVE SUMMARY**

#### **PURPOSE**

e performed an audit on the establishment of the National Environmental Supercomputing Center (NESC) located in Bay City, Michigan. The purpose of this audit was to determine whether the EPA complied with laws and regulations and whether excessive costs were incurred.

#### **BACKGROUND**

In 1988, the Agency began planning the acquisition of a supercomputer to be used to support EPA programs. The Agency had intended to locate the computer in Research Triangle Park. North Carolina. However, in 1990, when Congress authorized EPA to lease or purchase the supercomputer, it also stipulated that the supercomputer would be located in the vicinity of Bay City. Michigan. Congress earmarked \$8.7 million for the project.

In 1991, EPA directed an Agency contractor to establish and staff the supercomputer center. In response to a newspaper advertisement, the contractor received one offer. The offeror, a "development partnership," proposed to lease a building built in 1910 to the contractor. On October 31, 1991, the contractor and the developer executed a five-year lease, and on the next day the developer purchased the building from its previous owner. Over the course of the next year the NESC building underwent extensive renovations.

In August 1992, the supercomputer was delivered. In October 1992, it was unveiled to the public in a dedication ceremony. On July 27, 1995, the provision that had required the computer to be located in the vicinity of Bay City was rescinded by Congress.

#### **RESULTS IN BRIEF**

EPA circumvented and manipulated several laws by having an Agency contractor acquire the building that would house the supercomputer, instead of using the services of the General Services Administration (GSA). If the EPA had followed applicable laws and regulations, we estimated the Government may have saved \$3.8 million over the 5-year lease period.

#### PRINCIPAL FINDINGS

(1) EPA
CIRCUMVENTED GSA
TO ACQUIRE THE
BUILDING

The Agency acquired the use of an office building for the NESC through a contractor. However, Public Law and implementing regulations vest most authority for acquiring office space for Government agencies with the General Services Administration (GSA). An Agency must have specific legislative authority to obtain office space independent of GSA. EPA did not have such atmority; therefore, it violated Public Law by using its contractor to acquire the building for Agency use.

(2) EPA
PRE-SELECTED THE
SUPERCOMPUTER
SITE

Agency officials visited Bay City and selected the building they wanted for the NESC. The same officials then manipulated the procurement process to have a contractor lease that building for Agency use. These actions not only violated the intent of the Competition in Contracting Act, but also resulted in the Agency excluding from competition a second building whose use could possibly have been acquired at far less cost. These same officials also provided acquisition information to the selected subcontractor five months before the procurement was advertised for competition, and dealt directly with a real estate agent representing the pre-selected building's owner.

(3) EPA EXCEEDED ITS AUTHORITY

EPA officials exceeded their authority and consequently violated the Antideficiency Act and the Competition in Contracting Act. The Antideficiency Act violation amounted to \$3.7 million. The addition of the NESC project to an existing contract violated the Competition in Contracting Act. Also, by approving permanent improvements to the NESC building they allowed a "giveaway" of Government property. Finally, these officials directed the contractor to: (a) organize a grand opening ceremony for the NESC, the costs of which were unallowable; and, (b) perform other work under the contract without first getting the Contracting Officer's approval. These situations occurred because the officials believed that it was within their authority to allow them to occur. In our opinion, they were mistaken.

#### (4) EPA'S SUBCONTRACT ADMINISTRATION VIOLATED LAW

EPA's administration of the NESC subcontract violated law and the Federal Acquisition Regulation (FAR). This violation exposed the Government to claims by the subcontractor for excess costs. It also complicated the recovery of Government property that had been "given away." The violation occurred because the Contracting Officer did not enforce the Truth in Negotiations provision of the Competition in Contracting Act during subcontract consent.

In addition, the Contracting Officer and the Project Officer did not ensure that \$5 million of Government equipment that was furnished to the contractor was recorded on property records. This equipment included the supercomputer. The omission reduced accountability thereby jeopardizing the equipment. After we brought the issue to the attention of the Project Officer, the equipment was added to the records.

# (5) EPA FAILED TO MAINTAIN DOCUMENTATION

Agency officials failed to make and preserve documentation of significant decisions and activities. Such documentation was required by the Federal Records Act and the Records Disposal Act (44 U.S.C. 3101). The undocumented EPA decisions involved the circumvention of GSA, violation of laws and improper direction given to the contractor.

The absence of records impeded our audit of the establishment of the NESC. The lack of Agency records required the use of subpoenas to obtain the majority of the documents we used from contractors, subcontractors, and other organizations.

#### RECOMMENDATIONS

#### We recommend the Deputy Administrator:

- Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct regulations and related policies and procedures.
- Hold senior managers accountable for compliance with Public Laws; related regulations, policies and procedures; and management controls issued pursuant to OMB Circular Number A-123.

 Coordinate with EPA's Office of the Comptroller in order to fulfill the reporting requirements for a violation of the Antideficiency Act. The Administrator must report all relevant facts and a statement of action taken to the President and Congress through the Director, Office of Management and Budget (OMB).

We recommend that the Acting Assistant Administrator for Administration and Resources Management:

- Contact GSA to obtain facilities for the National Environmental Supercomputing Center in accordance with law and regulations.
- Determine that required facilities will be available at reasonable cost in accordance with law and regulation when EPA's access to the current space expires.
- Review all office and other space arrangements where costs are charged direct to contracts, and ensure the space arrangements were established and are managed in compliance with law and regulation. We further recommend we be provided: (1) the draft plan and questionnaire for comment prior to implementation and (2) a copy of each completed review.
- Provide training to Agency officials on: the Federal
  Property and Administrative Services Act of 1949; 41
  U.S.C. 14; the uses and limitations of appropriations; the
  Competition in Contracting Act; the Antideficiency Act;
  the Federal Records Act; the Records Disposal Act; and
  related regulations, policies and procedures.

#### AGENCY COMMENTS AND OIG EVALUATION

We issued a draft report on August 6, 1996. We received a response from the Acting Assistant Administrator for Administration and Resources Management (OARM) on September 20, 1996. Although the response disputed many of the issues raised in our draft report, OARM stated that it was in general agreement with the recommendations of the report. We reviewed the response and made changes in our report as warranted. However, we did not materially change our position. The response can be found in its entirety in Appendix III. Due to the length of the response, we addressed the Agency's comments

on our findings and recommendations, including our evaluation of their comments, after the Chapter's recommendation section.

On September 30, 1996, an exit conference was held with Agency senior managers from OARM and the Office of General Counsel.

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#### **CHAPTER 1**

#### INTRODUCTION

#### **PURPOSE**

We performed an audit on the establishment of the National Environmental Supercomputing Center (NESC) located in Bay City, Michigan. The purpose of this audit was to determine whether EPA complied with applicable laws and regulations and whether excessive costs were incurred.

#### BACKGROUND

The National Data Processing Division (NDPD), of the Agency's Office of Administration and Resources Management (OARM), began planning the acquisition of a supercomputer in 1988. This plan envisioned placing the supercomputer in Research Triangle Park, North Carolina, where other Agency computer operations are located. An August 15, 1989, study concluded that a Government-owned, contractor-operated facility would be more cost-effective than a contractor-owned, contractor-operated facility. However, the Agency, despite several attempts, could not acquire the needed funding for the project.

On June 26, 1990, the House of Representatives passed the, "Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Bill, 1991." This bill included funding for a supercomputer for EPA's regional acid deposition monitoring (RADM) program. This program, operated by the Atmospheric Research and Exposure Assessment Laboratory in Research Triangle Park, North Carolina, was developed to model the cause and effect relationship between sources of air pollution and the resulting quantities, locations, timing, and the resulting types of acidic deposition. The bill also included funding for an EPA Center for Ecology Research and Training (CERT) to be established in Bay City, Michigan. The bill's provision specifically provided:

\$9,700,000 of which \$8,700,000 is for the lease/purchase of a dedicated class VII supercomputer to support the regional acid deposition monitoring program, and \$1,000,000 for planning and site acquisition for a new EPA Center for Ecology Research and Training to be established in Bay City, Michigan.

Subsequently, the Senate passed its appropriation bill which did not concur with the money for the computer, or with the center to be located in Bay City, Michigan. The House-Senate conference committee report that reconciled the two bills stated, "The conferees agree to siting and acquisition of the computer . . . in the Bay City, MI, vicinity." On November 5, 1990, Congress passed Public Law 101-507, providing Abatement, Compliance and Control (AC&C) funds for the computer and the CERT. Congress also stipulated:

That notwithstanding any other provision of law, the lease or purchase of a computer, from funds appropriated under this paragraph, to support the regional acid deposition monitoring program, and the planning and site acquisition for a new EPA Center for Ecology Research and Training, shall be established in the Bay City, Michigan vicinity. . . .

Congress earmarked \$8.7 million for the lease or purchase of the computer in Conference Report 101-900 for fiscal year 1991, but did not grant authority or funds for EPA to acquire a facility to house it. Because EPA did not have a facility in the vicinity of Bay City, it consulted with its Office of General Counsel and Facilities Management Services Division. As a result, EPA decided to task a contractor to provide the computing services and to acquire the use of a facility as "incidental" to providing these services (this contractor had been awarded a contract in 1987 to operate and support EPA computers). However, documentation in regard to this decision was not maintained.

On May 28-30, 1991, EPA's contractor advertised in a local Bay City newspaper for 14,000 square feet of space to be situated in Bay City. On June 25, a "development partnership" submitted the only response to the advertisement. The developer offered to lease to EPA's contractor a building built in 1910 that would require extensive renovations to meet current local codes. Upon accepting

the offer, the contractor hired a subcontractor to design the facility and mechanical and electrical equipment supporting the computer. The work was added to the contract by a modification dated August 30, 1991. After the design was drafted, the contractor and the developer executed a five-year lease on October 31, 1991.

On November 1, 1991, the developer purchased the building from its previous owner. On December 2, 1991, EPA's Contracting Officer consented to the lease as a subcontract under the Agency's prime contract for computer support services. Over the course of the next year the NESC building underwent extensive renovations. The supercomputer was delivered in August 1992 and unveiled to the public in a dedication ceremony in October 1992.

On July 27, 1995, the provision of Public Law 101-507 that had required the computer to be located in the Bay City, Michigan vicinity was rescinded by Congress.

### SCOPE AND METHODOLOGY

Our audit was initiated to address concerns regarding the possible misuse of appropriated funds and violations of laws, regulations, rules, policy, and procedures. We examined EPA's contract activity related to the establishment of the NESC. We did not examine the functions, operations, and services of the NESC and .EPA's management controls taken as a whole. Our audit fieldwork was conducted between May 16, 1994 and March 8, 1996.

Except as discussed below, we performed the audit in accordance with Government Auditing Standards, 1994 Revision promulgated by the Comptroller General of the United States. We reviewed sections of OARM's reviews in support of EPA's 1993 Integrity Act Report to the President and Congress, as required by the Federal Managers' Financial Integrity Act, in planning our audit. Our examination included tests of documents and other auditing procedures we considered necessary. We issued a draft report on August 6, 1996. We received a response from the Acting Assistant Administrator OARM on September 20, 1996. Although the response disputed many of the issues raised in our draft report, OARM stated that it was in general agreement with the recommendations of the report. We reviewed the response and made changes in our report as warranted. However, we did not materially change our position. The response can be found in its entirety in Appendix III. Due to the length of the response, we addressed the Agency's comments on our findings and

recommendations, including our evaluation of their comments, after the Chapter's recommendation section.

On September 30, 1996, an exit conference was held with Agency senior managers from OARM and the Office of General Counsel.

## SCOPE IMPAIRMENTS

We were unable to interview a contractor employee who: (a) managed the solicitation and negotiation of the subcontract to lease the NESC building facility; and (b) participated in planning the renovation of the facility. Nor were we able to gain a complete understanding of the solicitation and negotiation of the subcontract and the renovation of the facility by other auditing procedures.

Contrary to law, EPA also failed to make and preserve documentation. This situation impeded our audit to the extent that the majority of the documents we used to reconstruct the establishment of the NESC were provided through subpoenas of contractors, subcontractors, and other organizations; not by EPA.

#### AGENCY COMMENTS ON SCOPE IMPAIRMENTS

We do not disagree that the Office of Inspector General's(OIG) inability to interview a contractor employee involved in the subcontracting and renovation of the Kahn building has limited the Agency's understanding of the establishment of the NESC.

The report, however, reflects a misunderstanding regarding the Agency's willingness to assist the OIG in this regard. While, as previously communicated to OIG, EPA cannot, under its contract with [the contractor], compel the contractor to make a specific employee available for interview by the OIG. The Office of Acquisition Management (OAM) has recently written [the contractor] to urge participation by its employee in the interview with the OIG in the hope of facilitating the investigation. The contractor was requested to respond to OAM's letter by October 3, 1996.

#### **OIG EVALUATION**

We acknowledge the Agency's position that they cannot compel the contractor to make a specific employee available for interview. Also, we appreciate OAM writing to the contractor to urge their employee to consent to the interview.

#### **AUDIT COVERAGE**

This audit covered EPA's involvement in the establishment of the NESC from October 1, 1990 through December 31, 1992. The audit also included contracts and EPA actions to establish the CERT that were related to EPA's involvement in the establishment of the NESC. In addition to EPA records, we also examined the records of contractors, subcontractors, and commercial organizations. Audit work performed at Agency organizations included: the Office for Administration and Resources Management: the National Data Processing Division; the Office of Acquisition Management; the Office of General Counsel; the Facilities Management and Services Division; the Office of Administration; the Office of Information Resources Management; the Cost Advisory and Financial Analysis Division; the Budget Division: the Financial Management Division; the Research Triangle Park Financial Management Center; and the Office of Grants and Debarment. We conducted interviews and other fieldwork at the following locations during our audit.

San Francisco, California

Midland, Michigan

Washington, D.C.

Saginaw, Michigan

Beltsville, Maryland

Omaha, Nebraska

Laurel, Maryland

Durham, North Carolina

Rockville, Maryland

Raleigh, North Carolina

Bay City, Michigan

Research Triangle Park, NC

Detroit, Michigan

McLean, Virginia

Lewistown, Michigan

We interviewed 70 individuals including: current and former EPA contracting officers; current and former EPA managers; current and former contractor personnel; current and former subcontractor personnel; local Bay City Government officials; personnel at various commercial organizations; and, private citizens. We also issued 13 subpoenas to obtain data from the contractor, subcontractors, and other commercial organizations. We examined the records identified in the following table.

#### **EPA**

Contractor, Subcontractor, and Other Commercial Organizations

Contract Documents
Contract Modifications

Contractor Proposals

Contract Management Work Plans Financial Management Reports

Award Fee Performance Reports

Project Work Authorizations

Contract Deliverables

Planning and Budget Documents Realty Acquisition Documents

Correspondence

Brochures

Visitor Registers

Project Status Reports

Travel Documents
Policies and Procedures

Financial Documents

Contract Documents

Consulting Agreements

Leases

Planning and Budget Documents

**Property Filing Documents** 

Real Estate Documents

Appraisal Reports

Government Property Lists
Bankruptcy Filing Documents

Photographs Video Tapes

Correspondence Meeting Minutes

Policies and Procedures
Periodicals and Publications

Our audit disclosed several areas requiring improvement, as well as violations of laws and regulations that are discussed in this report. Recommendations are provided to assist the Agency in improving those areas. We examined applicable management controls and procedures specifically related to our audit objectives; however, we did not test all of EPA's controls. Any material internal control weaknesses disclosed and related recommendations to strengthen controls are included in Chapters 2 through 6.

#### **CHAPTER 2**

#### EPA CIRCUMVENTED GSA TO ACQUIRE THE BUILDING

The Agency acquired the use of an office building for the NESC through a contractor. However, Public Law and implementing regulations vest most authority for acquiring office space for Government agencies with the General Services Administration (GSA). An Agency must have specific legislative authority to obtain office space independent of GSA. EPA did not have such authority; therefore, it violated Public Law by using its contractor to acquire the building for Agency use.

EPA representatives provided various explanations why this occurred including: (a) EPA was not obligated to utilize GSA because obtaining the space was merely "incident" to the contractor's primary role of providing computer support services; (b) the type of appropriation to fund the supercomputer precluded GSA involvement; (c) EPA could task the contractor to acquire space as long as it was not occupied by Government personnel; and (d) GSA would not have obtained the space in a timely manner. We disagree with these explanations. The law does not recognize the legitimacy of some, the facts do not support the rest. Thus, no legally sufficient explanation exists for EPA's circumvention of GSA. A fundamental precept of Government operation is that an Agency cannot do indirectly what it is not permitted to do directly. Thus, EPA should not have used the contract to accomplish a purpose it could not do by direct expenditure.

We also determined that had EPA engaged the services of GSA and bought the building, the Agency could have saved approximately \$3.8 million over the 5 year lease period.

RELEVANT LAWS
AND REGULATIONS

There are various laws, regulations, and principles that pertain to this issue. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490) transferred all functions of leasing and managing building space for use by Government agencies to the Administrator of General Services in 1950. The Federal Property

Management Regulations, 41 Code of Federal Regulations (CFR) 101-18.101 (1990) implement the Act with similar provisions. Title 41 U.S.C. 14 prohibits the purchase of land for the United States unless a law authorizes the purchase. Court cases have held that this section also applies to leasing real estate. The United States General Accounting Office Principles of Federal Appropriations Law (page 4-5) stipulates that an agency cannot do indirectly what it is not permitted to do directly. Thus, an agency cannot use the device of a contract to accomplish a purpose it could not do by direct expenditure.

Standards for Internal Controls issued by the Comptroller General include the following standards:

- Managers and employees are to have personal and professional integrity and are to maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal controls.
- Transactions and other significant events are to be promptly recorded and properly classified.
- Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved.

The June 21, 1995, revision to Office of Management and Budget (OMB) Circular Number A-123 states:

As Federal employees develop and implement strategies for re-engineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls.

I - EPA Circumvented GSA to Establish a Facility for Agency Use Rather than obtain office space through GSA as required, EPA acquired its NESC building through one of its prime contractors. Project Work Authorization 98-91 (dated February 12, 1991) tasked this contractor to "Establish and Staff Bay City Super Computing Facility." Project Work Authorization 22-92 (dated November 22, 1991) tasked the same contractor to "Provide staff, facility, supplies and other support as necessary to implement and operate an EPA Supercomputer Center at Bay City." In our

opinion, the Agency used its contractor to acquire a building for its own use.

The Agency, on the other hand, contended that it did not have to go through GSA because the building was acquired as part of "computer support services" under the contract. In 1992, according to the Agency's Office of General Counsel, "[T]he lease of the . . . facility to house the Supercomputer was incident to the provision of computer support services." In effect, EPA argued that it was buying "computer modeling" and that the contractor needed a building within which to "model."

We disagree that the building was merely incidental to "computer support services." The acquisition of the building was a significant part of the work performed in Bay City. The contractor was tasked to "Establish and Staff Bay City Super Computing Facility" and "[T]o implement and operate an EPA Supercomputer Center . . .", not provide "computer support services." Therefore, rather than being a contractor building for computer operations, this building was established as an EPA center for EPA purposes. Moreover, other Agency actions also contradicted the notion that the NESC was merely a contractor building used to provide computer support services to EPA:

- The Director of the NESC, an EPA employee, was on site for over three years. During our audit; however, he was moved off site after the Agency determined that obtaining office space for a Government employee under this contract was improper. The assignment of the EPA employee demonstrates that the facility was for the Agency's use.
- As will be explained in Chapter 3, the Agency pre-selected the building it wanted and then instructed the contractor to go and lease it.
- EPA dictated the length of the lease, not the contractor. Furthermore, the binding commitment was for 5 years with 5 one-year options while the contract itself had only 11 months until expiration.
- The bulk of the contractor's effort involved renovating the building. The contractor provided virtually no "computer support service," because the supercomputer was not delivered until five weeks before the contract was due to

expire. The contract was extended three months to allow the contractor to complete the renovation.

- EPA took steps to ensure that the building would be available for EPA's use no matter who the contractor was. The Agency directed that the lease restrict assignment only to EPA contractors. An OAM official explained, "We wanted the building. We insisted on [the restriction]." Furthermore, EPA's solicitation for the successor contract required bidders to add approximately \$3.8 million to their bids for termination of the Kahn building lease if the lease was not assumed.
- EPA directed the installation of special features including a video conferencing room, a training center, and an auditorium to be used as a visitor center. It would be unlikely that a contractor buying computer services for itself would invest in such extra features in someone else's building.
- The Agency directed that building security and telecommunications be compatible with other Agency facilities. With proper authorization, the NESC security access cards can be used at various EPA sites including Research Triangle Park, North Carolina. The telecommunications services used Federal Telecommunications System 2000--the Government's system. Such compatibility indicates that the building was for EPA use and not merely a contractor building for computing services.
- EPA openly proclaimed the building as its own. For example, the Office of Administration identified the NESC as an EPA facility in a presentation to the Administrator entitled, "EPA Buildings and Facilities." The NESC building signs prominently include the EPA and NESC logo. The NESC FY 1993 Annual Report explained that the facility was established by the EPA as "our computing facility."
- OAM defended tasking the contractor to lease the building with a Federal Acquisition Regulation (FAR) provision addressing Government-operated facilities. OAM asserted:

[P]ursuant to FAR 45.302-3, the lease of the building was within the scope of the contract because the services and the facilities were used in connection with the operation of the National Computer Center.

FAR 45.302-3 states that facilities may be provided to a contractor when, "the contract is for work within an establishment or installation operated by the Government." (Italics added.)

#### II - Rationale For Circumventing GSA

Interviews with, and written statements from, Office of Administration and Resources Management (including OAM and the Facilities Management and Services Division) and Office of General Counsel (OGC) officials yielded conflicting reasons why the Agency bypassed GSA. OARM officials asserted that they could not have used GSA because the supercomputer project funds Congress appropriated were part of the Abatement, Control and Compliance (AC&C) appropriation. According to OARM officials AC&C funds could not be used for intramural (EPA internal) activities, including GSA rent for office space. Other OARM officials claimed that although GSA was an option, GSA would not have been able to complete the project within the two year life span of the funds appropriated by Congress. In addition, OARM and OGC officials gave conflicting accounts as to how the decision to bypass GSA came about.

In the first instance, the explanation that AC&C funds could not have been used for GSA rent was not only contradicted by most of the other EPA officials interviewed, but also by EPA practices. The Agency used AC&C funds to pay GSA rent for other facilities since the Bay City project began in Fiscal Year 1991. Admittedly, a 1987 EPA directive did prohibit using AC&C funds for intramural activities such as GSA facility rent. However, this same directive also prohibited using these funds on any part of the contract that EPA used to acquire the NESC building. In any case, the point is moot because concurrent Congressional changes to EPA's appropriation structure made the directive outdated. Thus, AC&C funds could have been used to pay GSA.

In the second instance, the Federal Property and Administrative Services Act of 1949 prohibits agencies from obtaining their own space. There is no exemption for time constraints. Moreover, no EPA official ever contacted the GSA to determine how long it would have taken to obtain a suitable facility for the supercomputer. Although several OARM officials said they thought others within EPA had contacted GSA, we found no documentation whatsoever to support that any such discussions with GSA had ever taken place.

Finally, EPA employees made conflicting statements regarding the decision to have the contractor rather than GSA obtain a facility to house the supercomputer. In general, OGC representatives maintained that:

- Their involvement in the issue was limited.
- They had recommended <u>against</u> obtaining the facility under the contract.
- Their recommendation was overridden by OARM.

An OARM representative informed us that:

- OGC was involved with the plan to have the contractor obtain the building.
- OGC did not take exception to the plan; if they had, he would not have gone against their advice.

The Facilities Management and Services Division (FMSD) representative informed us that:

- The decision to use the contractor had already been made before FMSD became involved.
- EPA should have obtained the use of the facility through GSA.

On the other hand, OAM representatives provided statements that conflicted with those made by both OGC and FMSD. These included:

• The decision to have the contractor acquire space was made after several phone conversations and a meeting with OGC.

- OGC gave them the very clear impression that the contractor could obtain the space as long as it was within the scope of the contract, and the space was not for additional office space for Government employees.
- OGC provided guidance on how the renovation costs should be included in the lease.
- It was the FMSD employee that eliminated GSA from consideration.

We were unable to establish the veracity of any of these statements, because none of the individuals involved were able to submit any documentation in support of their assertions.

III - Lease Versus Purchase

EPA officials not only violated the law, they were inefficient in the process. It cost the Government more to renovate and lease the building than it would have to purchase a comparable building. We estimate that had EPA engaged the services of GSA and bought the building, the Agency could have saved approximately \$3.8 million over the five-year lease period. Specifically, EPA will pay \$4.1 million in rent, whereas the estimated cost of Government ownership would be \$300,000 over the same five-year period. (The \$300,000 estimate is based on a total estimated cost of ownership. including Kahn building purchase and renovation costs. The estimate is developed by dividing the total \$2,188,000 by the 40 year estimated life of the building to estimate the cost of ownership per year. The yearly cost of ownership, approximately \$55,000, is multiplied by the five years of the lease to develop the \$300,000 estimate.) Furthermore, the Government would then have owned a building.

EPA realized contractor acquisition was more expensive than Government acquisition long before the project began. EPA tasked another contractor to study supercomputer facility options for Research Triangle Park (RTP), North Carolina in 1989. The study concluded that when the same interest was acquired, be it lease or purchase, Government acquisition was less expensive because contractor indirect expense rates and fees were not added. The study did not compare lease cost to purchase cost.

We estimate that the building owners recouped all their costs by August, 1995, thus leaving as profit \$1.4 million, the payments over the 20 months remaining on the lease. A portion of this profit resulted from EPA directing the contractor to accelerate payment of all general renovation costs. Normally these costs would be spread over the life of the renovations, or over the 40-year life of the building, whichever is less; however, EPA directed that the costs be spread over the 5-year lease period. Consequently, the building owners received excess profit. Furthermore, at the end of the lease period, the owners will have a virtually new building-fully renovated at Government expense--while EPA will either have to sign a new lease, or obtain space at another facility.

As explained in Chapter 3 of this report, a second facility existed, which had been described by an Agency official as a "state-of-the-art computer center." It was sold for \$900,000, less than two years after the Agency rejected it.

#### IV - Internal Controls

The actions taken by EPA officials represent an internal control failure. Government employees are required to follow Standards for Internal Controls issued by the Comptroller General to help prevent illegal, unauthorized, and questionable acts. These standards require managers and employees to maintain a level of competence that allows them to accomplish their assigned duties, as well as to understand the importance of developing and implementing good internal controls. The standards also require transactions and other significant events be promptly recorded and properly classified. Moreover, a June 21, 1995, revision to Office of Management and Budget (OMB) Circular Number A-123 states that Federal employees should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls when developing and implementing strategies for re-engineering agency programs and operations.

In regard to the NESC establishment, EPA officials did not accomplish their assigned duties in compliance with laws and regulations. They also did not record transactions and significant events. Consequently, accountability for decisions and results was not maintained.

#### CONCLUSION

The Agency violated the law and circumvented GSA by instructing one of its contractors to lease a building for the supercomputing center. This occurred because EPA personnel were either uninformed of, or indifferent to, the criterion governing the lease of office space. Moreover, these Agency employees did not comply with the standards for internal controls issued by the Comptroller

General in that assigned transactions and significant events were not promptly recorded, accountability was not maintained, and internal control objectives were not achieved.

#### RECOMMENDATIONS

We recommend the Deputy Administrator:

- 2-1) Provide training to senior-level managers on the uses and limitations of appropriations.
- 2-2) Hold senior managers accountable for ensuring documented management controls are in place and followed in accordance with OMB Circular Number A-123.

We recommend the Acting Assistant Administrator for Administration and Resources Management:

- 2-3) Contact GSA to obtain facilities for the National Environmental Supercomputing Center in accordance with law and regulations.
- 2-4) Determine if required facilities will be available at reasonable cost in accordance with law and regulation when EPA's access to the current space expires.
- 2-5) Review all office and other space arrangements where costs are charged direct to contracts, and ensure the space arrangements were established and are managed in compliance with law and regulation. We further recommend we be asked to review and provide input, as appropriate, to the review plan; and be provided copies of all reviews.
- 2-6) Provide training to OARM officials on: the Federal Property and Administrative Services Act of 1949; Title 41 US Code, Section 14; and, the Federal Property Management Regulations to ensure that future office and other space arrangements are obtained properly.

#### AGENCY COMMENTS AND OIG EVALUATION

The response by OARM disputed many of the issues in this chapter, but generally agreed with our recommendations. Based on the response, we changed recommendation 2-3 (draft report

recommendation 2-1) and inserted a new recommendation 2-4. We now recommend that the Agency: (a) contact GSA to obtain supercomputing facilities; and (b) ensure the facilities are available at reasonable cost when EPA's access to the current space expires. Otherwise, we did not materially change our position. The response in its entirety is contained in Appendix III.

OARM asserted that at the time the Agency opted to use its contractor to acquire the use of the building, Agency officials legitimately believed that a contract could serve as an acceptable alternative to acquiring space through GSA. This decision "[W]as based on the Agency's lack of legal authority to acquire a facility and its recognition that utilization of the General Services Administration's (GSA's) acquisition process would entail a number of months." We agree. EPA does lack the legal authority to acquire a facility--such authority rests with GSA. We also agree that going to GSA would probably have entailed "a number of months" to acquire a facility. However, as previously mentioned, no EPA official ever contacted GSA to determine how long it would have taken to obtain a suitable facility for the supercomputer. Moreover, there is no exemption for time constraints to the Federal Property and Administrative Services Act.

OARM also stated that, "[I]t is not improper for agencies to require contractors to lease space in performance of a contract," and provided three Comptroller General decisions to support this assertion. We reviewed these decisions and concluded that they were not relevant. In two of the decisions, the contractual situations differed vastly from the EPA situation; in the third instance, an Office of General Counsel attorney informed us that the decision had been cited in error.

OARM further stated that the FAR requires contractors to obtain facilities necessary to perform Government contracts. We agree. However, we do not agree that this requirement extends to Government space requirements. We also do not agree with the implication that space leased by the contractor for Government use is somehow exempt from the Federal Property Management Regulations. The law (41 U. S. C. 14) stipulates that, "No land shall be purchased on account of the United States, except under a law authorizing such purchase." Court cases have held that this prohibition extends to lease of real estate.

The OARM response stated that using AC&C funds precluded going through the GSA to obtain space. We did not discuss this issue in detail in our draft report, because it was never mentioned as a justification by any of the principal participants in the establishment of the NESC, nor was it cited in any contemporaneously prepared documentation. Only two EPA officials mentioned AC&C limitations as a reason not to go to GSA during our interviews, and these officials said they had little involvement with the establishment of the NESC.

In any case, OARM's explanation of the use of AC&C funding is contradictory. OARM stated that EPA was prohibited from using these funds to pay for an "intramural" activity such as paying rent to GSA for the NESC. It should be pointed out however, that EPA used "intramural" (salary and expense) funds to pay for ADP support on the NESC contract. Moreover, the classification of activities as "intramural" is only an EPA policy that the Agency itself has admitted is confusing. For example, in a December 1988 letter to the Office of Management and Budget, EPA described its plan to implement a new accounting system:

Also included in this plan is the elimination of the terms "intramural" and "extramural" from the budgeting process. These are EPA expressions, based on object class definitions, which are not used government-wide and which are frequently misunderstood within EPA.

Attached to OARM's response, were documents that purported to show that no AC&C funds were used to pay rent to GSA. We compared these documents to the actual expenditures reported in EPA's budget to Congress. We were unable to reconcile these documents. As such, we could not substantiate OARM's statement that the use of AC&C funds precluded them from going through GSA.

OARM defended the use of AC&C funds by stating that EPA was specifically directed and authorized by Congress to use these funds for the <u>supercomputer</u>. We agree. However, Congress did not authorize EPA to use these funds to obtain the use of a <u>facility</u>.

OARM also disputed our positions in regard to both the lease and the renovation of the Kahn building. Nonetheless, we stand by our original positions. OARM also questioned the cost savings that may have been realized had EPA obtained the use of the alternate site, i.e., the existing computer center. The response maintained that this site would have required extensive renovation to bring it up to the minimum standards for housing a supercomputer. In rebuttal, we would offer the following two statements. First, according to the OARM-RTP Director, this site was:

[A] 24,000 square feet state-of-the-art computer center. It would be the envy of every computer center director or facility manager who saw it.

Second, in a letter from the Chairman of EPA's House Appropriation Subcommittee to the owner, the Congressman stated:

> This is to confirm our recent conversation regarding the possible procurement by the U.S. Environmental Protection Agency of a supercomputer to be housed in Bay City.

[T]he [name deleted] facility has been visited by officials of the University of Michigan; and they have indicated that the facility is very well suited to the needs of proper maintenance and operation of a supercomputer. You may expect future visits from U of M and EPA officials in the near future for a further on-site inspection of the facility.

The response indicates that an OARM study, due for completion in December 1996, will determine the best way to obtain high performance computing support in the future. Nonetheless, we are concerned that this study will not enable the Agency to move its equipment in a timely manner, as the current lease will expire in April 1997. Consequently, we believe that EPA should contact GSA as soon as possible.

OARM Response to Recommendation 2-1 (Draft Report 2-4)

OARM agreed that Senior Resource Officials will benefit from training regarding the uses and limitations of appropriations. Such training will be provided in FY 1997.

**OIG** Evaluation

The planned training should achieve the intent of the recommendation. No further action is required.

OARM Response to Recommendation 2-2 (Draft Report 2-5) OARM agreed that senior Federal managers should be accountable for taking systematic and proactive measures to develop and implement cost-effective management controls.

**OIG** Evaluation

OARM's concurrence is noted. EPA by holding its senior managers accountable will help alleviate the problem. No further action is required.

OARM Response to Recommendation 2-5 (Draft Report 2-2) During FY 1997, OAM will review, by program office, a representative sample of contracts likely to have such office or other space arrangements, to ensure they were established and are managed in compliance with law and regulation.

**OIG** Evaluation

The action planned by OAM should help alleviate the problem. We request that OAM forward to us a list of the contracts it plans to review, as well as the results of its review.

OARM Response to Recommendation 2-6 (Draft Report 2-3)

OARM agreed that some training or dissemination of information regarding the cited Act and regulations would be beneficial to EPA managers, including contracting and project officers. OARM stated that it would determine an appropriate forum and mechanism for providing the training or distributing the relevant information during 1997.

**OIG Evaluation** 

OARM's response did not meet the intent of the recommendation. In light of the gravity of the issue, we believe that OARM's plan of action is too vague. Thus, we reiterate that the Agency needs to provide training--not disseminate information--to OARM officials on the Federal Property and Administrative Services Act of 1949; Title 41 US Code, Section 14; and, the Federal Property Management Regulations to ensure that future office and other space arrangements are obtained properly.

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## **CHAPTER 3**

## **EPA PRE-SELECTED THE SUPERCOMPUTER SITE**

Agency officials visited Bay City and selected the building they wanted for the NESC. The same officials then manipulated the procurement process to have an EPA contractor lease that building for Agency use. These actions not only violated the intent of the Competition in Contracting Act (the Act), but also resulted in the Agency excluding from competition a second building whose use could possibly have been acquired at far less cost. These same officials also violated acquisition regulations when they provided acquisition information to the selected subcontractor five months before the procurement was advertised for competition and dealt directly with a real estate agent representing the pre-selected building's owner.

In addition, the "comparable" price quotes submitted by the contractor to the Contracting Officer to justify the rental price of the pre-selected building were questionable. Moreover, other price quotes that did not support the rental price of this building were omitted from the package the contractor submitted to the Contracting Officer, and were only obtained under an OIG subpoena. Finally, the pre-selection of the building resulted in acquisition of a facility twice as large as required.

RELEVANT LAWS, REGULATIONS, AND DECISIONS The actions by the Office of Administration and Resources Management personnel associated with the pre-selection of the supercomputer site violated the principles of various laws, regulations, and decisions. (For actual citations, see Appendix I).

Competition

The Competition in Contracting Act (41 U.S.C. 253) pertains to executive agencies obtaining contractor services, rather than an agency's contractor obtaining subcontractor services. However, the Comptroller General has found that the procedures followed by a contractor must conform to Federal policy objectives that underlie Federal statutes. One of the policy objectives of the Competition in Contracting Act stipulates that in conducting a procurement for property or services, an executive agency shall specify its needs and solicit bids or proposals in a manner designed to achieve full

and open competition. According to the legislative history of the Act:

Competition is not a procurement procedure, but an objective which a procedure is designed to attain... The last, and possibly the most important, benefit of competition is its inherent appeal of 'fair play.' Competition maintains the integrity in the expenditure of public funds by ensuring that government contracts are awarded on the basis of merit rather than favoritism.... The Attorney General has interpreted congressional intent as 'preventing favoritism... and the notorious mischief of making contracts privately.'

According to the Comptroller General, it is a fundamental principle of competitive negotiation that offerors must be treated equally by a procuring activity. The dual purpose of requiring agencies to obtain full and open competition is to ensure that a procurement is open to all responsible bidders and to provide the Government with the opportunity to receive fair and reasonable prices (Decision B-265869, January 2, 1996).

Moreover, court decisions have maintained that:

Proof of subjective bad faith by procuring officials, depriving bidder of fair and honest consideration of its proposal, generally constitutes arbitrary and capricious action; bad faith includes predetermining the awardee or harboring prejudice against plaintiff. Latecoere Intern., Inc., v. U.S. Dept. of Navy, 19 F.3d 1342 (11th Cir. 1994)

Law of procurement does not tolerate actions reflecting personal predilections of administrative officials, whether ascribable to whim, misplaced zeal, or impermissible influence. Parcel 49C Ltd. Partnership v. U.S., 31 F.3d 1147 (Fed. Cir. 1994)

Contacting Potential Offerors

The Federal Acquisition Regulation (FAR 15.402) (1990) stipulates that contracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. Government personnel shall not provide the

advantage of advance knowledge concerning a future solicitation to any prospective contractor.

#### **BACKGROUND**

Congress funded \$8.7 million for an EPA supercomputer to be located in the Bay City, Michigan vicinity. The acquisition planning for this computer was carried out by OARM's National Data Processing Division (NDPD). In order to lease a building to house the supercomputer, OARM, NDPD, with the assistance of the Office of Acquisition Management (OAM), utilized the services of an EPA contractor under contract to operate Agency computer facilities—not obtain real estate.

The purpose of this chapter is to depict how EPA violated laws and regulations by: (a) selecting the site it wanted for the NESC facility; (b) providing details regarding requirements to the site-owner's agent in advance of the formal solicitation; and (c) directing the contractor to tailor the solicitation to fit the characteristics of that site.

## LEASE CHRONOLOGY

I - Bay City Vicinity Site Options On December 20-21, 1990, the then Director, Office of Administration and Resources Management, Research Triangle Park, NC (OARM-RTP), accompanied by the then Director of the Office of Information Resources Management and the then Director of NDPD, toured two potential sites within the Bay City vicinity.

The first site, the Kahn building, was a two-story, 21,000 square foot building located within Bay City that:

- Had been constructed in 1910.
- Was unoccupied since 1986.
- Did not meet current local building codes.

The owner of the Kahn building was represented by a real estate agent, who also had a relationship with a developer interested in purchasing the building.

The second site was a single story building located just outside of the city limits of Bay City. In the words of the OARM-RTP Director, it was:

> [A] 24,000 square feet state-of-the-art computer center. It would be the envy of every computer center director or facility manager who saw it. The

S&L who owns it never moved in and is presently using it for storage of equipment and fixtures.

The owner of the second site informed the Director, OARM-RTP that the property could be purchased for substantially less than the current \$2.5 million asking price, or even leased if EPA so wished.

## II - Rationale For Site Selection

In a January 7, 1991 memorandum, the Director, OARM-RTP recommended having the EPA contractor lease the Kahn building or something in the area for the supercomputer. Specifically, he explained that the other building, the computer center, was ideal except for:

It was too large for our needs (roughly 5,000 square feet at this time). . . .

The second problem is that it is not downtown. Since the Lake Guardian [the "Lake Guardian" was a former oil rig supply vessel that had been converted into an EPA research ship docked along the Saginaw River] will be moored in the downtown area it makes no sense to fragment our presence, even on a 2-5 year basis. Having been through that, first in Cincinnati and now in RTP it is worth a lot to be physically collocated together.

Thus, the Director concluded that the Agency should task the contractor:

[T]o obtain a 2-5 year lease on the Kahn building or something in the area for the Supercomputer.

# III - Exclusion of Competition

The decision to lease the Kahn building was made almost two months before the requirement was formally advertised for competitive bid. We were informed by the Director, NDPD and by the EPA Project Officer, that the contractor stated that initially both the owners of both the Kahn building and the computer center had made offers. However, according to the Director, NDPD, the requirements were subsequently changed by EPA officials, i.e., to have the contractor limit the area of consideration to the city of Bay City rather than the vicinity of Bay City as stated in Public Law 101-507. Therefore, the computer center was effectively excluded from the competition.

However, there was no justification for the restriction. First, the computer facility that was excluded from competing for the award was located in the Bay City vicinity as promulgated in the Public Law. Second, there was absolutely no need to link the supercomputer to the "Lake Guardian;" the Director of the NESC stated that the data collected by the ship could be analyzed on a personal computer.

EPA officials violated the intent of the Competition in Contracting Act when they unreasonably manipulated restrictive provisions to exclude a viable competitor.

## IV - Inappropriate Contacts

Throughout the period leading up to the formal advertisement for bids in late May 1991, EPA personnel had made inappropriate contacts with the real estate agent representing the owner of the Kahn building. The following information was obtained from various documents we reviewed and interviews we conducted during the audit.

#### December 1990

During their visit to Bay City, the OARM officials provided EPA requirements and requested engineering data as to the strength of the floor and the electrical grid capabilities for the building. This data was submitted by the agent in January 1991, along with a cover letter stating, "Should we receive a tentative commitment from EPA, we will proceed with the 'coring' to more accurately assess the 'live load' capacity."

The floor strength and the electrical grid capabilities were key evaluation criteria in that they were eventually included in the project requirements of the bid solicitation and the source selection plan. The "coring" operation commenced in March 1991. By providing these project requirements to the owner's agent, EPA officials violated the FAR requirement to treat all prospective offerors equally.

#### January 1991

The Director, OARM-RTP recommended having the EPA contractor lease the Kahn building or something in the area for the supercomputer.

#### March 1991

In response to a request from the EPA contractor, the real estate agent submitted a cost estimate for a 5,000 square foot facility, noting that the Kahn building's floors were strong enough for the supercomputer. The agent also sent the Director, OARM-RTP a letter from a structural engineer concerning the building's floor strength.

### April 1991

A meeting was held to plan the acquisition of the Kahn building, among other subjects. In attendance were the Assistant Administrator, OARM, the Deputy Assistant Administrator, OARM, and the Director, OARM-RTP. As a result of the meeting, the Director, OARM-RTP notified the Director, NDPD that pending Contracting Officer approval, it had been decided to lease the entire Kahn building for five years, with an additional five one-year options. There was concern over how much it would cost to renovate the entire building and how to spread the renovation costs over the lease. (Note: These EPA officials violated the intent of the Competition in Contracting Act by planning to select the Kahn building prior to advertising for competition.)

The Director, NDPD notified the EPA contractor of the decision to lease the Kahn building and commented, "I assume we can be flexible with the length of lease right up to signing. I need to see our plan for negotiating and getting an approved design by some time next week."

The Director, NDPD and the Director, NESC agreed to budget \$300,000 for partial renovations to the second floor and telecommunication equipment of the Kahn building.

The real estate agent informed the building owner that, "I expect any day now to be in receipt of 'Program' specifications and parameters that the building will have to meet. I don't expect any surprises."

The contractor submitted draft project requirements to the Project Officer that included a 14,000 square foot leased facility located:

[I]n the downtown Bay City area. Locations within two miles of the existing dock for the Lake Guardian vessel and the proposed site of the permanent EPA-owned facility will be given preference.

The agent informed the owner that the Kahn building was the desired location for the EPA facility and that:

While there may be competition from the market place, our friendly Congressman would like to see this property as the location. Enclosed is an EPA "Status Report" for your review.

Within 2 weeks we will have to make some quick decisions on whether to sell the office building (presumably to the developer) or develop it and lease it to EPA.

The EPA Project Officer informed the Contracting Officer that: (a) the project will require a 14,000 square foot leased facility located within the city limits of Bay City, Michigan; and (b) there would be only one firm selected for negotiations. The Contracting Officer approved the project plan.

## May 1991

After approving the plan, the Contracting Officer expressed concern over selecting only one firm for final negotiations. The Project Officer responded to this concern by asserting that negotiating with two firms would be cost and time prohibitive.

The developer agreed to purchase the Kahn building, subject to signing a lease with EPA or the Agency's contractor.

On May 10, the real estate agent sent the owner and the developer a copy of the project's requirements, and mentioned to the owner that bids would be solicited in the local newspaper at the end of the month.

During an interview with a local newspaper, an OARM official explained that the Agency had already ruled out the existing

computer center as a possible site for the supercomputer facility because it was located too far from the city.

On May 28-30, the EPA contractor advertised requirements for 14,000 square feet of space to be located within the city limits of Bay City, Michigan. The bids were due by June 28.

#### June 1991

A NDPD "task schedule," dated June 3, listed the developer as a participant in the renovation of the NESC.

On June 25, the developer submitted a bid package for the lease of the Kahn building at \$24.50 a square foot per year. This was the only offer submitted.

#### V - "Comparable" Rates

On October 31, 1991, the EPA contractor executed a lease with the developer. On November 1, the developer purchased the Kahn building. On December 2, 1991, the Contracting Officer consented to the subcontract (lease) between the contractor and the developer. Before consenting; however, the Contracting Officer suggested that the contractor obtain comparable market lease rates for general office space in other buildings in order to justify the lease rate proposed for general office space in the Kahn building. In response, the contractor obtained five such rates from the real estate agent. However, the contractor only submitted the three highest rates to the Contracting Officer. Both we, and the Contracting Officer, only learned of the existence of the other two rates because of an OIG subpoena served on the real estate agent in 1995.

#### **GENERAL OFFICE RATES**

BUILDING	COST PER SQUARE FOOT PER YEAR		
Midland #1	\$17.48		
Midland #2	. 17.00		
Saginaw #1	14.30		
Saginaw #2	13.00		
Saginaw #3	12.25		

None of the five buildings were comparable. They were located in Midland and Saginaw-not Bay City. In fact, they were all located farther away from Bay City than the computer center, which had been eliminated from consideration by EPA because of its distance from Bay City. All five buildings were Class "A" office structures located in two of the best commercial areas in Midland and Saginaw (according to a GSA appraiser, Class "A" buildings must be constructed after 1988 and be located in good commercial areas). According to a real estate appraisal, the Kahn building was a Class "C" structure; there were no Class "A" office buildings in Bay City.

None of the five rates were comparable to the rates for office space in Bay City. As seen in the "General Office Rates" chart on the previous page, the rates for the better commercial areas in Midland and Saginaw ranged from \$12.25 to \$17.48 per square foot.

However, the rate for general office space in the Kahn building had been considered far less by the developer who eventually purchased the building. In a letter dated September 21, 1990, the developer asserted to the owner of the Kahn building, that the market price for general office space in the Bay City area ranged from only \$4.50 to \$7.00 per square foot:

We recognize that the remodeling costs are only relative to the total cost and together with our purchase price represent a very attractive per square foot price. . . . The market price in the area is from \$4.50 to \$7.00 per square foot, relatively low. But its (sic) a matter of supply and demand. At this time Bay City has more supply of existing office space than demand, as evidenced by how long this property has been available.

In discussions with our perspective (sic) client, they have indicated that they can pay approximately \$7.00 to \$7.50 per square foot absolute net. Using their required layout, we have enclosed an estimate of remodeling costs of \$616,000 and based on the rent that can be generated plus remodeling costs, we have \$275,000 available for purchase of the property. We believe that \$7.30 per square foot, like you, is very reasonable, however its (sic) at the top of the scale in this area.

## VI - Building Space Exceeded Requirements

Pre-selection of the building resulted in acquisition of a facility twice as large as required. According to GSA regulations in effect at the time, as well as EPA guidelines that have gone into effect since, the Agency should have first developed its space requirements, and then gone through GSA to fill them. Instead, the Agency circumvented GSA, picked out the building it wanted, and then defined and redefined its space requirements. This is demonstrated in the following chronology and table:

- December 1990 The Director of OARM-RTP began the search for a building.
- March 1991 The Project Officer increased the requirements to include an Information Center.
- April 1991 Technical Specifications were drawn up by the EPA contractor.
- September 1991 Final requirements were designed by a subcontractor hired by EPA's contractor. The subcontractor's report stated:

Currently, it is the intention of the contractor and EPA to operate a fully functioning Super Computer which will act as a public awareness center, educating the public about the role of the EPA in today's environmentally conscious society. This site was specifically chosen for that purpose and it is the intention of the contractor and EPA to create an operational showpiece.

#### **SOUARE FOOTAGE ESTIMATES**

	12/90	3/91	4/91	9/91 <sup>1</sup>
Supercomputer	5,000	5,000	9,000	9,218
Information-Ctr	• .	6,000	5,000	5,033
Visitor Center	•	-	-	1,250
Building Stair & Elevator	-	-	<b>-</b>	3,333
Total	5,000	11,000	14,000	18,834

<sup>1.</sup> These amounts are expressed in functional gross square feet (FGSF). FGSF is defined as total building area (20,592 for the Kahn building) less outside walls.

<u>Supercomputer</u>. The Agency used 9,218 square feet of space for the supercomputer, operations staff, telecommunications and other support requirements. While we believe the change in the usage for the supercomputer is a result of EPA's desire for an operational showpiece, we do not question the need for this square footage.

Information Center. The final design included space for a visualization lab and technical staff, classrooms, and a break room. The visualization lab and technical staff are not required for supercomputer operations. We have been informed by operators of other supercomputers that these functions can be remotely located. EPA had already established these functions at RTP. Therefore there was no need to duplicate them in Bay City. The classroom and break room are not necessary for supercomputer operations and are used for an EPA public outreach program.

<u>Visitors Center</u>. The visitor center is neither related to the operation of a supercomputer nor the Regional Acid Deposition Monitoring program. This area was included to fulfill EPA's desire to have a public awareness center and an operational showpiece.

<u>Building Stair and Elevator</u>. The building stair and elevator were an attribute of the building and not a requirement for the supercomputer. If a one-story building had been selected, stairs and the elevator would not be needed.

#### CONCLUSION

Almost every action connected to obtaining the building to house the NESC was questionable. Lacking any procurement authority whatsoever, EPA program officials: (a) pre-selected the building they wanted for the supercomputer site; (b) disclosed information to the site owner; and (c) unreasonably restricted the area of consideration to exclude the only known competitor. Moreover, these events all occurred months before the solicitation for "competition" was even advertised. Also, the provenance of "comparable" price quotes used to justify the rates paid to rent the pre-selected building was dubious. As a result, EPA acquired a facility that was twice as large as the Agency required.

#### **RECOMMENDATIONS**

We recommend the Deputy Administrator:

3-1) Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct regulations and related policies and procedures against EPA officials who violated the intent of the Competition in Contracting Act and related Federal policy objectives and regulations.

We recommend the Acting Assistant Administrator for Administration and Resources Management:

- 3-2) Require that contract and project officer training courses emphasize the Competition in Contracting Act and related Federal policy objectives and regulations in order to ensure full and open competition is obtained, or its absence is properly justified.
- 3-3) Require that contract and project officer training courses emphasize that acquisition information should not be released inappropriately.
- 3-4) Conduct special training courses in Fiscal Year 1997 that concentrate on the areas discussed in recommendations 3-3 and 3-4 and which must be attended by all contracting and project officers.
- 3-5) Issue a memorandum to senior management to reemphasize that all space requirements on future projects must be coordinated through the Facilities Management and Services Division.
- 3-6) Require OARM staff to comply with GSA regulations and EPA guidelines in regard to defining space requirements on future projects.

## AGENCY COMMENTS AND OIG EVALUATION

The response by OARM disputed many of the issues in this chapter and generally agreed with our recommendations. We analyzed OARM's response, and we did not materially change our position. The response in its entirety is contained in Appendix III.

OARM maintained that the Conference Report contained contradictory instructions about where the supercomputer was to be located. According to OARM, one section of the report indicated that it should be in Bay City, while another section specified that it should be in the Bay City vicinity. Because of this inconsistency, EPA officials sought and received guidance from members of the Appropriations Committee and consistently tried to give meaning to the inconsistent Congressional direction. It was the understanding of EPA officials that the new facility was to be located in Bay City.

We disagree with the notion that Congress mandated that the facility had to be located in Bay City rather than in the vicinity of Bay City. While the Conference Report admittedly contained both terms, it concluded with a statement that the supercomputer would be located in the vicinity of Bay City. More importantly, the Law that funded the supercomputer specifically stated that it would be located in the vicinity of Bay City. Furthermore, an EPA employee, who had helped draft the language that eventually became law, informed us that they had used the term vicinity in order to give the Agency the most flexibility possible for determining a location. In addition, OARM employees, who assembled the solicitation for the Center for Ecology Research and Training (CERT) facility project, were told by OGC to use the term vicinity.

OARM maintained that there were also sound business reasons for locating the facility <u>in</u> Bay City, i.e., to be near the "Lake Guardian" and the likely site of the CERT facility. In our draft report, we explained that there was absolutely no need to link the supercomputer to the "Lake Guardian." And, because the NESC facility was only to be temporary, there was also no need for it to be located near "the likely site" of the CERT. Moreover, documents we reviewed indicate that this "likely" CERT site was also being pre-selected by EPA. Although EPA advertised for a site in October 1991, it had already planned which specific site it was interested in two months earlier. The August 1991 CERT project plan stated:

Currently, the 35-50 acre parcel is bounded . . . on the south side by an asphalt plant. The asphalt plant especially creates a great deal of noise and pollution that would need to be heavily screened. In addition,

the exhaust fumes from the asphalt plant may affect any future laboratory facility. By acquiring the entire 78 acres, the EPA avoids any concerns over its immediate neighbors because the site extends to the Saginaw River on the west side and to an existing roadway scheduled for a major reconstruction on the east. Purchasing the entire 78 acres would ensure EPA that its neighbors are of no concern. . . .

OARM admitted that in implementing Congressional direction, EPA officials made some mistakes. For example, OARM believed that EPA officials played an inappropriately intrusive role in the contractor's lease of the NESC site. At a minimum, the EPA officials' conduct created the impression that the site had been "pre-selected" by the Agency. Moreover, the course of dealing appeared to have been inconsistent with contracting principles and Agency policy concerning EPA involvement with subcontractors. In addition, OARM recognized that records were not properly created and maintained, as a significant amount of contract related "business" was conducted orally or via electronic mail.

OARM Response to Recommendation 3-1 OARM disagreed that there have been any violation of the Competition in Contracting Act.

**OIG** Evaluation

Although OARM agreed that every effort should be made to encourage competition, it took the position that the Competition in Contracting Act is not relevant to subcontract awards. We agree that strictly speaking the Act is not applicable to subcontract awards. That is why we stated that EPA officials violated the *intent* of the Competition in Contracting Act when they unreasonably manipulated restrictive provisions to exclude a viable competitor. Moreover, we also agree with OARM's position that FAR clause 52.244-5, Competition in Subcontracting, does not extend the Act's requirements to subcontracts--which is precisely why we did not make this statement.

However, the Comptroller General had found that subcontract competition is judged using the "Federal norm." OARM project officials toured Bay City and identified only one potential site. Comptroller General decisions have held that, under the "Federal norm," a procurement becomes competitive only when more than one source that can meet the Government's needs are known. The

fact that only one source was identified should have alerted OARM's contracting officials that the procurement was sole source. Furthermore, these officials should have known that an advertisement that elicited only one bid did not change the procurement from sole source to competitive. The fact that the procurement was sole source should have triggered an evaluation of whether the award was subject to the Truth in Negotiation provisions of the Competition in Contracting Act and whether a cost analysis was warranted.

OARM Response to Draft Report Recommendation 3-2 OARM disagreed that there have been any violation of the Procurement Integrity Act, because the Act does not apply to subcontracts placed after prime contract award. OARM did agree to look into possible violations of the standards of ethical conduct and the contracting principles embodied in Agency policy.

**OIG Evaluation** 

We accept OARM's explanation at this time and have dropped the recommendation from the final report.

OARM Response to Recommendation 3-2 (Draft Report 3-3) OARM believed that it had already met the intent of the recommendation. OAM had begun using standard, Federally-endorsed (Federal Acquisition Institute) training courses for contracting personnel, which heavily stressed the Competition in Contracting Act and related competition issues. OAM also revised one project officer course and was in the process of revising another. Both courses emphasized competition and related issues. In addition, OAM had new Contract Management Manual guidance, currently undergoing final Green Border review, on the roles and responsibilities of project officers in subcontract administration.

**OIG Evaluation** 

We agree that the referenced courses do meet the intent of the recommendation in regard to procurement integrity and related ethics issues. No further action is required.

OARM Response to Recommendation 3-3 (Draft Report 3-4) OARM believed the intent of this recommendation had already been met. A review of the contracting and project officer courses indicated that procurement integrity and related ethics issues were addressed.

In addition, and in accordance with the Office of Government Ethics (OGE), all contracting personnel and project officers are required to file standard form OGE 450, Confidential Financial Report, to determine possible conflicts of interest. Employees who file OGE 450 are also required to take an annual ethics course, much of which is dedicated to procurement integrity issues.

#### **OIG** Evaluation

We agree that the referenced courses do meet the intent of the recommendation in regard to procurement integrity and related ethics issues. No further action is required.

## OARM Response to Recommendation 3-4 (Draft Report 3-5)

OARM did not believe that such training was necessary in light of the emphasis of the Competition in Contracting Act in its training courses and the Procurement Integrity Act in the annual ethics training requirement.

#### **OIG Evaluation**

We agree that the referenced courses do meet the intent of the recommendation in regard to procurement integrity and related ethics issues. No further action is required.

## OARM Response to Recommendation 3-5 (Draft Report 3-6)

OARM planned to issue a reminder of the requirement to Senior Resource Officials and their staffs.

#### **OIG Evaluation**

The alternative action proposed by OARM should achieve the intent of the recommendation. We have revised our recommendation to reflect the proposed corrective action. No further action is required.

## OARM Response to Recommendation 3-6 (Draft Report 3-7)

GSA regulations and EPA guidelines will be included in the memorandum noted in recommendation 3-6, and will be issued to OARM staff.

#### **OIG Evaluation**

The action planned by OARM should achieve the intent of the recommendation. No further action is required.

## **CHAPTER 4**

## **EPA EXCEEDED ITS AUTHORITY**

EPA officials exceeded their authority and consequently violated the Antideficiency Act and the Competition in Contracting Act. The Antideficiency Act violation amounted to \$3.7 million. The addition of the NESC project to an existing contract violated the Competition in Contracting Act. Also, by approving permanent improvements to the NESC building they allowed a "giveaway" of Government property. Finally, these officials directed the contractor to: (a) organize a grand opening ceremony for the NESC, the costs of which were unallowable; and (b) perform other work under the contract without first getting the Contracting Officer's approval. These situations occurred because the officials believed that it was within their authority to allow them to occur. In our opinion, they were mistaken.

## I - Antideficiency Act

EPA violated 31 United States Code (U.S.C.) § 1341(a) (the Antideficiency Act) by ordering a lease that ran longer than the available appropriation. The Antideficiency Act prohibits Government employees from involving the Government in a contract before funds are appropriated. The NESC building lease did precisely that by purporting to obligate the Government to reimburse its contractor \$3.7 million over four-and-one-half years before the funds for those years were appropriated. The multi-year lease was conceived by OARM managers in order to spread the cost to renovate the NESC building over five years. Although OAM contract officials raised serious objections, nevertheless, they ultimately acquiesced with the plan.

The multi-year lease plan was decided during an April 5, 1991, meeting of OARM managers. The participants included the Assistant Administrator, OARM, the Deputy Assistant Administrator, OARM, the Director, OARM-RTP, and the Deputy Director, the Office of Administration. On April 26, 1991, the Project Officer issued a project requirement document, under the Project Work Authorizations (PWA), which directed the contractor to negotiate a lease that lasted longer than the appropriation.

Specifically, the requirements called for a five year lease with five one-year renewable options, while EPA's appropriation was due to expire in 17 months.

On October 31, 1991, EPA's contractor signed the five-year lease with the developer. Then on November 1, 1991, EPA's contractor purchased the NESC building. Initially, OAM balked at the idea of a five-year lease, because EPA did not have a five-year appropriation or a five-year contract. As a result, the OAM contracting officials warned that: (a) the period of performance for any subcontract could not be longer than the option in which it is issued; and (b) the contractor would be liable for costs beyond the first year of the lease. Despite these arguments; however, on December 2, 1991, the Contracting Officer did consent to the lease. Although she added a notation to the lease consent that the Government would not be held liable for the lease beyond September 30, 1992, this caveat was inexplicably not incorporated into any contract modification.

On March 30, 1992, an OAM Branch Chief informed the Project Officer that the five-year lease was approved, but warned that this was not to occur again. Specifically, the Branch Chief told the Project Officer that:

We thought through the multi-year leasing issue and agreed that contracts would go along with it on this action since these multi-year leases have some precedent under the [name deleted] contract and also the CO [Contracting Officer] had approved the use of a multi-year lease in a work plan. We also agreed that we would not authorize their use again. . . . The transfer of the existing leases to the winner of the FM [Facilities Management] contract will be the end of this type of arrangement.

All leases done under our contracts will be single year only, with options to extend built into the Prime contract!!!!!! We will not approve a work plan or subcontracting agreement that has multi-year leases in them.

I hope the multi-year leases in the existing contracts don't create expensive problems for us. But if they do, it only illustrates why we should not get into them in the first place.

Despite obtaining OAM's agreement to the five-year lease, the Project Officer was not satisfied. In his March 31, 1992 reply, he informed the OAM Branch Chief that:

I believe this is very short sighted on our part! It is just not the way most folks in the private sector work. The price tag the Bay City landlord would want as a buyout at the end of one year would be astronomical and I doubt that any of us would have been willing to have approved it. It would be one more item for endless negotiation. Most of the office landlords around here would probably not even entertain such an option. If you are not willing to sign a multi-year deal, they will just lease to someone else. Ultimately, this will cost the taxpayers more money because the landlord will negotiate higher lease rates just to play our game.

We have used assignable leases for years. Why has this suddenly become a problem?

Both the OAM Branch Chief and the Project Officer were in error. The Antideficiency Act prohibits Government employees from involving the Government in a contract before money is appropriated to pay for that contract. The five-year lease of the NESC building involved the Government four-and-one-half years beyond the life of the appropriation that funded the contract. As no funds had been appropriated for those years, the amount of the violation was \$3,706,560 (monthly rent of \$68,640 multiplied by the 54 months remaining on the lease). The intent of the Antideficiency Act is to prevent executive branch employees from incurring obligations not authorized by Congress, which has the sole authority for appropriating funds. EPA officials violated the Act by agreeing to the five-year lease. The Act requires that such violations be reported to Congress, and provides that the violators can be punished by suspension without pay, removal, fines, or imprisonment.

II - Competition in Contracting Act

The addition of the NESC project to an existing contract violated the Competition in Contracting Act. This Act does not allow for the addition of work that was not within the scope of the competition of the original contract award. Instead, such additional work should be competitively procured as a new contract.

The scope of the contract EPA used to renovate and lease the NESC building was actually for computer operations and related services at specific locations. There was no mention of "Bay City," "supercomputers," "NESC," or "building renovations." The Comptroller General provided factors for determining if a modification is material and therefore improper. These factors include the type of work, the performance period, whether the solicitation for the original contract adequately advised offerors of the potential for the types of change contemplated, whether the change is of a nature that potential offerors would have reasonably anticipated, and whether the work was envisioned at the time the contract was originally awarded (Decision Numbers 69 Comp. Gen. 292 and B-188408, June 19, 1978 - see Appendix I).

Admittedly the NESC project was not planned at the time the contract was awarded. However, the evidence shows the change was material. Most importantly, the work was different. Rather than use existing employees, the contractor hired new consultants to help establish the NESC and new employees to operate the supercomputer. In addition, the performance period of the lease was longer than the contract, and the contract period had to be extended to complete the renovations. Potential offerors could not have anticipated the change because the contract does not mention the project. Although OAM officials claimed to have written a "Justification for Other than Full and Open Competition," they were unable to provide us a copy. In our opinion, other contractors chosen under a competitive basis could have done the same job--at a lesser cost.

III - "Giveaway" of Government Property The EPA allowed a "giveaway" of Government property by approving permanent improvements to the NESC building as part of the lease costs charged to the contract. According to Comptroller General decisions (see Appendix I), it is a well-established rule that appropriated funds may not ordinarily be used for the permanent improvement of private property unless specifically authorized by law. This rule is based on the fact that no Government official, in the absence of specific legislation, is authorized to "give away" Government property. In the past, this

rule has been upheld to the extent that even an "urgently needed" emergency landing field at a privately-owned airport was denied because there was no legislation to allow the permanent improvement. There was also no such specific legislation regarding the NESC building. Furthermore, we were unable to calculate the value of property "given away," because the Contracting Officer failed to obtain any cost and pricing data supporting the proposed lease rate. (See Chapter 5 of this report.)

The building selected to house the NESC required significant renovation in order to meet current building codes, as well as the additional improvements necessary to accommodate the supercomputer. The permanent improvements to the building paid for by EPA included new windows, floors, a roof, an elevator, walls, carpets, a heating system, electrical wiring, and the removal of asbestos. As explained in Chapter 2 of this report, the developer purchased the building one day after EPA's contractor signed the lease. Also, the developer recouped the initial investment early on into the lease, a factor that contributed heavily to the \$3.8 million in excess lease costs. Furthermore, although the lease was for only five years, the improvements "given" to the developer will last longer.

#### **ESTIMATED LIFE OF "GIVEAWAYS"**

ESTIMATED LIFE	IMPROVEMENTS
7 Years	Carpet Computer Floor Plumbing HVAC Temperature Controls Electrical
15 Years	Sewers Site Drainage Parking Lot Site Lighting
31.5 Years	Building Roof Doors Elevator

The EPA Contracts Management Manual addresses permanent improvements. The Project Officer was aware of the manual as he requested a copy from contracting personnel in an April 1991 memorandum in which he stated:

If any improvements that will cost the Government money are necessary to [contractor's name deleted] acquired Non-Government Realty, all terms of Chapter 5 of the Contracts Management Manual will be complied with.

Chapter 5 of the Contracts Management Manual stipulates what is to occur prior to the award of a contract that envisions permanent improvements to private property at Government expense. Basically, the Project Officer is to provide enough information to enable the Contracting Officer to approve or disapprove the proposed improvement. Such information includes:

- A description and estimated cost of the improvement.
- The arrangement under which the improvement will be provided, i.e., lease payment.
- The proposed contract provisions to protect the interests of the Government. For example, such provisions would spell out how much money the Government would be reimbursed for the fair market value of the improvement at the end of the lease.

In regards to the improvements to the NESC building, the Government will receive nothing because no EPA official took any action to protect the Government's interest.

## IV - Grand Opening Ceremony

OARM officials exceeded their authority by directing the contractor to organize a grand opening ceremony for the NESC, and then charge the costs to the contract. The Contracting Officer exceeded her authority by accepting these costs as allowable. However, these costs were ineligible because such events are not recognized as appropriate by GAO's *Principles of Federal Appropriations Law* (page 4-215). We identified \$23,540 charged for a consultant, tents, tables, and chairs. Evidence indicates additional costs were incurred for food, plaques, and catering staff.

We requested documentation from EPA, the contractor, and the subcontractors; however, none was provided.

The NESC grand opening was held on October 16, 1992; planning for the event commenced several months earlier when the contractor hired a former EPA employee as a consultant. The ceremony itself included: a speech by the local Congressman, a speech by an EPA official, a ribbon cutting, and a barbecue lunch. Related events included presentation of plaques to dignitaries (including EPA employees), a Chamber of Commerce breakfast, and tours of the NESC building.

## V - Unauthorized Work

EPA personnel exceeded their authority by directing the contractor to perform work without the Contracting Officer's prior approval. The Director, OARM-RTP, the Director, NDPD, and the Project Officer orally ordered \$43,102 of work despite the fact that they had no contracting authority. These changes were never submitted to the Contracting Officer for approval, and hence were never formally incorporated into the contract. The \$43,102 represented:

- \$38,051 for a building access cardreader, a closed circuit television, and a fire alarm system.
- \$4,912 to change a conference room into a video conferencing room.
- \$139 for clothing storage bins for visiting EPA employees.

Initially, the Director, OARM-RTP and the Director, NDPD instructed an NDPD employee to obtain price estimates and issue Government purchase orders to obtain the cardreader, the closed circuit television, and the fire alarm system. However, the contractor complained that this was improper because the contractor could not maintain the appropriate relationship with its landlord if EPA arranged the work. The contractor also stated that it would not accept responsibility for work ordered by the Agency. Subsequently, the Project Officer sent the contractor an electronic mail message instructing "[Y]ou should consider these requirements as technical direction." In response, the contractor issued purchase orders to the developer (the building owner), who then issued subcontracts to the firms originally selected by the Agency, one of which informed the developer that EPA already had approved its bid.

In addition, the Project Officer ordered work to begin prior to the Contracting Officer giving approval by contract modification. He issued two PWAs for the establishment of the NESC, amounting to \$2.2 million. Although the contractor began working, it was four and six months, respectively, until the Contracting Officer modified the contract to include the two PWAs.

In our opinion, these situations were caused by a misunderstanding over authority. For example, the Director, NDPD defended ordering changes to the conference room by asserting that he had the authority by nature of his position:

I viewed these modifications . . . as . . . technical direction . . . to insure that EPA received the most effective renovation of the building to best meet the Agency's needs. . . . It was my understanding . . . I was authorized to expend additional Government monies as part of my responsibilities in the technical direction realm . . . I did not feel it was necessary to obtain Contracting Officer approval to expend the additional funds. . . . It was my belief that . . . increased costs were acceptable as long as the additional costs were within the ceiling of the contract.

It would appear that the Project Officer shared the NDPD Director's belief. In commenting on the Project Officer's earlier direction of the contractor, the former Contracting Officer remarked:

I state without smiling that we people, whose signature spends the Government's funds, would like to retain the illusion that we understand and approve a contract change before the program manager directs the contractor to do new work.

According to FAR 43.102(a) (1991), only the Contracting Officer has the authority to modify a contract to add work; other Government personnel are to limit their technical direction to work that is already authorized in the contract. New work that could otherwise be properly added to the contract should not have been ordered by personnel providing "technical direction."

Unauthorized work diverts funds provided for legitimate contract

work, effectively "taking from Peter to pay Paul," and can cause a violation of the Antideficiency Act.

#### RECOMMENDATIONS

#### We recommend the Deputy Administrator:

- 4-1) Coordinate with EPA's Office of the Comptroller in order to fulfill the reporting requirements of 31 U.S. C. § 1351 for a violation of 31 U.S.C. § 1341(a). The Administrator must report all relevant facts and a statement of action taken to the President and Congress through the Director, Office of Management and Budget.
- 4-2) Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct regulations and related policies and procedures regarding violation of the Antideficiency Act or the Competition in Contracting Act.

We recommend the Acting Assistant Administrator for Administration and Resources Management:

- 4-3) Review all current subcontracts to identify any other violations of the Antideficiency Act.
- 4-4) Provide personnel with contract administration responsibilities training on the Antideficiency Act and appropriate limits for subcontract periods. This should be incorporated into the training discussed in recommendation 3-4.
- 4-5) Develop and implement policies and procedures to ensure EPA does not direct a contractor to subcontract beyond the available appropriation or the end of the contract.
- 4-6) Provide OARM officials with contract administration responsibilities training on the use of Government funds for permanent improvements to private property.
- 4-7) Reemphasize to project officers and managers the extent and limits of their contract administration responsibilities, stressing that they may not direct additional work without explicit authorization.

4-8) In each new EPA contract award, define the project officer's authority and responsibility.

## AGENCY COMMENTS AND OIG EVALUATION

The response by OARM disputed the issues in this chapter and generally disagreed with our recommendations. We analyzed OARM's response, and we did not materially change our position. OARM's response in its entirety is contained in Appendix III.

#### OARM Response to Recommendation 4-1

OARM asserted that EPA did not violate the Antideficiency Act, since it was not a party to, or bound by, the lease for the Kahn Building. The subcontract between the subcontractor and EPA's contractor did not serve to legally obligate EPA. In consenting to the subcontract, the Contracting Officer specifically noted that the Government would not be held liable beyond the date of the expiration of the contract.

#### **OIG** Evaluation

We disagree with the OARM's position and continue to believe the subcontract creates an Antideficiency Act violation. Subcontract privity is not relevant to EPA's liability for five years of rent costs. Subsequent events confirmed the intentions that existed at the time the [the contractor] lease was executed. That is, the termination reference in the solicitation for the follow-on contract and the lease assumption clause in the follow-on contract reflected what EPA intended all along; that an EPA cost-reimbursement contractor would lease the space for at least five years, effectively obligating the Agency for lease payments throughout that entire period.

The contract that continued the NESC project included the lease and stipulated that, "[T]he Contractor shall assume the leases from the predecessor Contractor." Clause H.32, page 112, of this contract stipulated that, "The successor contractor shall be responsible for assuming the lease(s)... at the Bay City, Michigan site from the incumbent contractor." At the time the successor contract was awarded, over four years remained on the subcontract.

The solicitation for the successor contract advised prospective bidders that the awardee would have to assume liability for the lease. The solicitation also advised bidders to factor in \$3.8 million in early termination costs should the contractor choose to relocate the supercomputer to another facility. This \$3.8 million was the estimated liability for lease payments after the existing contract ended. Thus, this provision had the practical effect of

compelling prospective bidders to continue occupancy of the facility.

Finally, OARM actions demonstrated that it intended for the supercomputer to be housed in the facility for at least five years. OARM officials directed that the lease run for five years in order to spread out the costs for the renovations to the Kahn building. From the beginning of the NESC project, OARM intended that its contractors would fulfill the liability for the lease costs and then be reimbursed by the Government.

To summarize, insofar as the Agency had available appropriated funds for only a fraction of the five year lease period, EPA incurred an obligation in advance of an appropriation. Consequently, EPA violated the Antideficiency Act and must report this violation to Congress.

## OARM Response to Recommendation 4-2

OARM's response stated that the OIG has not, at this time, made available for Agency review certain Office of Audit work product materials. The OIG has advised us (1) that our access to such materials would not advance resolution of any audit report findings, and (2) that the materials at issue are potentially only germane to a determination of whether, and to what extent, personnel actions might be appropriate.

It is our understanding that, after all audit report issues other than this one are resolved, the OIG will make available to us its work product materials relevant to the personnel issue. Once the OIG has released such information, OARM will review it and take appropriate personnel actions as warranted.

#### **OIG** Evaluation

The actions planned by OARM should meet the intent of the recommendation. We will provide access to the documents required after all audit report issues are resolved.

## OARM Response to Recommendation 4-3

OARM disagreed that a review of EPA subcontracts to ensure compliance with the Antideficiency Act was necessary. These instruments do not legally obligate Federal funds because there is no privity of contract between subcontractors and the Agency.

In addition, all of the Agency's cost reimbursement clauses include FAR clauses 52.232-22 and 52.232-20, Limitation of Funds and Limitation of Costs, respectively which may provide further

protection against Antideficiency Act violations. The language in these clauses makes it quite clear that the Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount obligated by the Government on the contract. This would include work done by a subcontractor, as well as that done by the prime contractor. The prime contractor is responsible for managing its subcontractors in this context. Also, as discussed, FAR Part 44 expressly states that giving consent to a subcontract in no way constitutes approval of any terms and conditions of the subcontract, because there is no privity between the Government and the subcontractor.

#### **OIG** Evaluation

We disagree with OARM's assertion that subcontracts never legally obligate Federal funds. As discussed in our evaluation of OARM's response to recommendation 4-1, Government actions can create a liability. The Limitation of Costs and Limitations of Funds clauses did not protect the Government in the cases and decisions cited in our evaluation of OARM's response to recommendation 4-1. Therefore, we reiterate our original recommendation.

### OARM Response to Recommendation 4-4

OARM agreed that training regarding the Antideficiency Act would be beneficial. OAM will, in coordination with the Office of the Comptroller, take advantage of special training opportunities (such as the annual EPA procurement conference) to conduct training for contracting and project officers regarding the application of the Antideficiency Act to Agency contracts. This training will be accomplished in FY 1997.

#### **OIG Evaluation**

The actions planned by OARM and OAM should fulfill the intent of the recommendation. No further action is required.

## OARM Response to Recommendation 4-5

The decision to subcontract and who to subcontract with, is a business decision made by a prime contractor. EPA cannot legally require a prime contractor to limit the term of a subcontract, since the subcontract may be in fulfillment of multiple requirements under several different contracts with several different agencies or firms. This recommendation conflicts with the well established legal principle that privity of contract limits an Agency's legal obligation to subcontractors.

#### **OIG Evaluation**

We agree that the decision to subcontract, and who to contract with, should be a business decision. That is precisely why we criticized OARM in Chapter 3 for directing the NESC subcontract, i.e., pre-selecting the Kahn building. However, we disagree that the Government is unable to restrict the length of a subcontract, because of the ramifications of the Antideficiency Act. Government employees are prohibited by the Act from involving the Government in a contract before money is appropriated to pay for the contract. Therefore, we reiterate our position that OARM needs to develop and implement policies and procedures to ensure no subcontracts run past the available appropriation or the end of the contract.

OARM Response to Recommendation 4-6

OARM will take advantage of special training opportunities to offer training regarding using Government funds for permanent improvements to private property. This training will be completed in FY 1997.

**OIG Evaluation** 

The action planned by OARM should fulfill the intent of the recommendation. No further action is required.

OARM Response to Recommendation 4-7 With the award of each new contract, the project officer receives a letter reiterating his/her duties, responsibilities, and authorities. OARM will revise this document to specify the scope and limitations of authority of the project officer.

**OIG** Evaluation

The action planned by OARM should fulfill the intent of the recommendation. No further action is required.

OARM Response to Recommendation 4-8 OARM will look into revising the EPA Technical Direction clause to identify the scope and limitations of the project officer's authority. OARM will also consider providing copies of the letter referred to in recommendation 4-7 to Agency contractors.

**OIG Evaluation** 

The response does not meet the intent of our recommendation. OARM project officials were inappropriately involved in the "giveaway" of Government property, the grand opening ceremony, and unauthorized work. Due to the significance of these actions, we can not close out this recommendation until OARM takes action or proposes an acceptable alternative to our recommendation.

OARM agrees that appropriated funds may not be used for permanent improvements to private property. However, OARM maintains, "[T]he appropriate time to definitively conduct such an

analysis is at the end of the contract." We disagree. The appropriate time to analyze such expenditures is in advance of the expenditure. OARM offered a Comptroller General decision in support of its position. In fact; however, this decision did not support OARM's position. The decision does not state that contract completion is the appropriate time to analyze permanent improvement costs. Furthermore, EPA's Contracts Management Manual requires preaward analysis and approval of all permanent improvement costs.

The response also questioned the guidelines we employed for evaluating expenditures for permanent improvements to private property. OARM offered three other Comptroller General decisions as appropriate guidelines for such evaluations. One decision concerned GSA's authority to repair and alter leased premises. However, this decision is not relevant because, as seen in our report, OARM circumvented GSA. The other decisions offered by OARM were in fact derived from the Comptroller General decision we used, namely, the decision contained in OARM's Contract Management Manual.

OARM alleges our finding concerning improper use of funds for the grand opening ceremony was premature and should await final audit. We disagree. The Contracting Officer was informed of the scope of subcontracts and consented to them. This informed consent was sufficient to draw the conclusion that these expenditures were improper.

We also disagree with OARM's assertion that the determination of whether OARM personnel took unauthorized actions must wait for a closeout cost audit.

In summary, we believe that rather than "look into" or "consider," OARM should implement the recommendation, i.e., define the project officer's authority and responsibility in each new contract award.

## **CHAPTER 5**

## **EPA'S SUBCONTRACT ADMINISTRATION VIOLATED LAW**

EPA administration of the NESC subcontract violated law and the FAR. This violation exposed the Government to claims by the subcontractor for excess costs. It also complicated the recovery of Government property that had been "given away." The violation occurred because the Contracting Officer did not enforce the Truth in Negotiations provision of the Competition in Contracting Act during subcontract consent.

In addition, the Contracting Officer and the Project Officer did not ensure that \$5 million of Government equipment that had been furnished to the contractor was recorded on property records. This equipment included the supercomputer. The omission reduced accountability thereby jeopardizing the equipment. After we brought the issue to the attention of the Project Officer, the equipment was added to the records.

# RELEVANT LAWS AND REGULATIONS

Cost-plus-a-percentage-of-cost contracts are prohibited by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)). The Competition in Contracting Act requires advance procurement planning and market research to achieve full and open competition (41 U.S.C. 253a(a)(1)(B)). The Act requires written justification when full and open competition is not achieved, i.e., sole source award. The following decisions illustrate the criteria for judging if full and open competition has been achieved:

- The Comptroller General found a competitive procurement is not converted into a sole source procurement when only one bid is received if it can be demonstrated that firms other than the sole responsive bidder could have met the requirements (Decision Number B-221559.2, July 31, 1986).
- The GSA Board of Contract Appeals (GSBCA) found that a solicitation under which forty-nine firms were solicited. but only one responsive bid was received, was ill-conceived

and resulted in less than the full and open competition required by the Competition in Contracting Act. The Board concluded the response was so limited as to excite inquiry, and a full explanation of the limited response disclosed that in fact full and open competition was not obtained (GSBCA Number 8329-P-R., April 10, 1986).

The Truth in Negotiations provision of the Competition in Contracting Act stipulates that before a subcontract is awarded the subcontractor must submit cost or pricing data. The subcontractor is also required to certify that this data is accurate, complete, and current (41 U.S.C. 254(d)). The legislative history for the Competition in Contracting Act states:

In Government contracting, competition is a marketplace condition which results when several contractors, acting independently of each other and of the government, submit bids or proposals in an attempt to secure the government's business.

[C]ompetition in contracting saves money . . . competition is a powerful motivator for cost control.

[This provision] addressed Congressional concern over noncompetitive contract prices being negotiated based on defective data submitted by contractors.

The contracting officer is responsible for determining price reasonableness for the prime contract. In order to make this determination, subcontractor cost or pricing data must be analyzed (FAR 15.806-1(a)(1)(1990)). The prime contractor is required to conduct a cost analysis of the data submitted by the subcontractor (FAR 15.806-1(a)(2)(1990)). Cost or pricing data is defined as facts that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. These facts include contractor historical accounting data, vendor quotes, and management decisions of the prospective contractor (FAR 15.801(1990)).

FAR 44.202-2 (1990) requires the Contracting Officer consider the following factors before consenting to a subcontract:

- Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
- Was adequate price competition obtained or its absence properly justified?
- Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?
- Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

#### I - Subcontract Type

The subcontract to lease the NESC building was signed on October 31, 1991. On the next day the developer purchased the building. On November 13, 1991, the contractor requested the Contracting Officer's consent to the subcontract. However, the subcontract document itself was not received at EPA until January 9, 1992, and then only at the behest of a Contracting Officer not affiliated with the contract. The Contracting Officer who was affiliated with the contract informed us that she had never in fact read the subcontract. Had she read the subcontract, she would have noted that it contained a provision prohibited by law, i.e., a cost-plus-a-percentage-of-cost provision. The provision stipulated that the lease price would be adjusted by cost plus 82.5 percent for material modifications to the renovation specifications.

## II - Subcontract Competition

As explained in Chapter 3 of this report, there was no subcontract competition because EPA pre-selected the site. Although the Contracting Officer informed us that she had been unaware of this lack of competition, the contractor's consent request did state that there had been only one bidder. The contractor asserted there had been competition because the requirement had been advertised in a Bay City area newspaper. However, an advertisement, by itself, does not fulfill the requirements for competition. The contractor should have conducted market research and planning to achieve full and open competition prior to the advertising. If this research identified only one bidder, the law required that efforts be made to enhance competition. If these efforts failed, then the contractor should have submitted a written justification for a noncompetitive award. In this instance no efforts were made and no justification

was submitted. During an interview, the Contracting Officer admitted that when only one bid is received, the process should be questioned. However, she did not.

## III - Truth in Negotiations

The Contracting Officer failed to enforce the Truth in Negotiations provision of the Competition in Contracting Act, as well as the related regulations requiring cost analysis. This law requires subcontractors to submit cost or pricing data and certify it is accurate, complete, and current. It also allows the Government to reduce subcontract prices that are inflated because of inaccurate, incomplete, or noncurrent data. Congress enacted this law to protect the Government's interest when market competition is not adequate to motivate a contractor to control costs. By not obtaining cost or pricing data, the Contracting Officer complicated the recovery of excess costs paid to the developer. This data also could have been used to monetize the Government property that had been "given away" as permanent improvements.

The consent package provided by the contractor did not include a cost analysis. The cost analysis would have provided the principal elements of the subcontract price proposed, and the difference between the price proposed and the price negotiated. Deeming the subcontract to have been competitively procured, the Contracting Officer did not request the cost analysis. She was unaware that there in fact had been no competition. The Contracting Officer informed us that she was also unaware that:

- The Law did not require the supercomputer to be located in the city of Bay City.
- The rates submitted by the contractor as "comparable" were not; they were for facilities in better commercial areas outside the Bay City vicinity.
- The "comparable" rates submitted by the contractor were not from an independent source, but rather from an agent of the developer.
- The building listed in the subcontract was 20,600 square feet; the space requirement advertised in the newspaper was only 14,000 square feet.

- The \$39.95 per square foot rate that EPA was paying had been negotiated up from the subcontractor's initial price proposal of \$24.50 per square foot.
- The Kahn building required extensive renovations.

The Contracting Officer informed us that had she been aware of the circumstances regarding the subcontract, she would have required the submission of certified cost and pricing data, and may not have consented to the subcontract.

## IV - Determination of Responsibility

As explained in Chapter 3 of this report, the basis of selection was flawed. EPA program personnel selected the building they wanted and then manipulated the procurement process to have the contractor lease it. There was no evidence that the contractor or the Contracting Officer evaluated the developer's responsibility to contract pursuant to FAR 44.202-2(a)(7) and 9.106-1. Proper evaluation of the subcontractor's responsibility would have disclosed that the developer had no performance record and did not own the building at the time the subcontract was negotiated and awarded by the contractor.

# V - Administration of Government Property

FAR 45.505(c)(1990) stipulates that official Government property records must identify all Government property. EPA relied on the contractor to maintain the official records. However, the contract stipulated the Government was to maintain the records. During a tour of the NESC, we noted property identification numbers on the supercomputer and its peripheral equipment. We attempted to trace the numbers to the contractor prepared Government property records. These records, however, omitted over \$5 million of equipment including the supercomputer, peripheral equipment, and upgrades to the supercomputer. These omissions reduced accountability, thereby jeopardizing the equipment. After we brought the issue to the attention of the Project Officer, the equipment was added to the records.

#### **RECOMMENDATIONS**

We recommend the Acting Assistant Administrator for Administration and Resources Management:

5-1) Provide Contracting Officers with training on subcontract consent procedures.

- 5-2) Require Contracting Officers to read proposed subcontracts before granting consent.
- 5-3) Require that Agency personnel maintain official property records for NESC equipment furnished to the contractor in accordance with the contract.
- 5-4) Require Government personnel periodically verify
  Government property inventories prepared by the
  contractor. This can be done by spot checking the
  inventory the contractors are required to submit to the CO
  by October 31 of each year.

## AGENCY COMMENTS AND OIG EVALUATION

The response by OARM disputed the issues in this chapter and generally disagreed with our recommendations. We analyzed OARM's response, and we did not materially change our position. OARM's response in its entirety is contained in Appendix III.

### OARM Response to Recommendation 5-1

OAM is currently revising its subcontract consent procedures in the form of a new chapter to the Contracts Management Manual. This chapter will be issued for Agency Directives Review (Green Border) during the first quarter of FY 1997. As an interim measure, a draft Procurement Policy Notice was issued and commented on by the OIG and will also be issued during the first quarter of FY 1997.

#### **OIG Evaluation**

The actions planned by OARM will fulfill the intent of the recommendation. No further action is required.

#### OARM Response to Recommendation 5-2

The assumption that inadequate performance on the part of any one contracting officer is assignable to all employees is without support. Although we believe that all EPA contracting officers are aware of and consistently comply with the requirement that they read proposed subcontracts before granting consent, this will be part of the policy noted above.

#### **OIG Evaluation**

The action planned by OARM will fulfill the intent of the recommendation, and no further action is required. However, we take issue with several of OARM's statements.

We agree that one employee's inadequate performance is not assignable to all employees. However, we believe a simple

reminder can both reinforce good work and help employees who may need it.

That said, many of the OARM employees that were involved in the establishment of the NESC were unable to identify problems requiring corrective action. For example, OARM alleged that we misinterpreted the FAR by concluding that the NESC subcontract was sole-source, because only one firm responded to the advertisement. Our position is that the NESC subcontract should have been treated as sole-source, because OARM employees believed only one source was acceptable. Similarly, OARM's contention that it was reasonable for the Contracting Officer to exempt the subcontract from the Truth In Negotiation Act evidences an even larger problem.

#### OARM Response to Recommendation 5-3

In accordance with the FAR, the official property records are maintained by the contractor. The accuracy of these records is audited, pursuant to an interagency agreement with the Defense Contract Management Command. To require Agency personnel to also maintain records would be duplicative.

#### **OIG** Evaluation

OARM's nonconcurrence is noted. Although allowing the contractor to maintain the records is a generally accepted method under the FAR, the Regulation also allows the Government to reserve this function for itself. Both the earlier contract, as well as the current contract, stipulated that the Government would maintain the records. Therefore, if EPA wishes to have the contractor maintain the official property records for NESC equipment, it should modify the contract. We recommend OARM provide us a copy of the contract modification when it is executed.

# OARM Response to Recommendation 5-4

In accordance with the FAR and individual contracts, EPA contractors are required to inventory and submit an annual report of Government property in their possession. This report must be accurate as of September 30, and be submitted to the Contracting Officer by October 31 of each year.

#### **OIG Evaluation**

OARM's response does not address the recommendation. We have reworded the recommendation to make it more clear. We recommend that Government employees periodically verify Government property inventories.

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## **CHAPTER 6**

#### **EPA FAILED TO MAINTAIN DOCUMENTATION**

Agency officials failed to make and preserve documentation of significant decisions and activities. Such documentation was required by the Federal Records Act and the Records Disposal Act (44 U.S.C. 3101). The undocumented EPA decisions involved the circumvention of GSA, violation of the Competition in Contracting Act, violation of acquisition regulations, and improper direction of the contractor.

The absence of records impeded our audit of the establishment of the NESC. The lack of Agency records required the use of subpoenas to obtain the majority of the documents we used from contractors, subcontractors, and other organizations.

# RELEVANT LAWS AND REGULATIONS

44 U.S.C. 3301 defines records to include all materials made or received in connection with the transaction of public business as evidence of decisions or other activities of the Government.

44 U.S.C. 3105 requires Agencies to establish safeguards to prevent the unlawful removal or destruction of records. It requires the safeguards include informing officials and employees of the penalties provided by law for the unlawful removal or destruction of records.

44 U.S.C. 3101 requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the essential transactions of the agency and to protect the legal and financial rights of the Government.

18 U.S.C. 641 provides criminal penalties for stealing any record of the United States.

18 U.S.C. 2071 stipulates criminal penalties for willful destruction of records or documents including fines, imprisonment, removal from office and disqualification from holding any office under the United States.

36 CFR 1222.38 (1990) requires Agencies to create and maintain records sufficient to: (a) make possible a proper scrutiny by duly authorized agencies of the Government; (b) protect the financial, legal, and other rights of the Government; (c) document significant decisions and commitments reached orally; and (d) document important meetings.

# Examples of Documentation Failures

We were not provided sufficient records related to EPA decisions and activities, because Agency officials failed to make and preserve such records. This lack of documentation violated 44 U.S.C. 3101. Examples of activities and decisions that the Agency failed to document are identified in the following:

- EPA officials decided to circumvent GSA and use an
  Agency contractor to obtain the use of the Kahn building.
  Representatives of various Agency offices provided us
  conflicting accounts of how this decision was made.
  However, we were unable to establish the veracity of any of
  the accounts, because none of the representatives were able
  to submit any documents to support their assertions.
- OARM officials decided to have the contractor lease the Kahn building. They instructed the contractor to develop a requirements plan to implement this decision in an April 6, 1991, electronic mail message. Also, on April 10, 1991, OARM budgeted \$300,000 to renovate the second floor of the Kahn building. Both of these decisions took place almost two months before the requirement was formally advertised. We learned of this information from contractor records; EPA had not retained any of the documents related to these events.
- EPA officials restricted the area of consideration for the NESC to the city limits of Bay City, Michigan, and provided conflicting accounts regarding this restriction. We were told by one official that the House Appropriations Committee set the location. Other officials told us that the Public Law required the facility to be located within the city limits of Bay City. Actually, the Public Law stipulated the location as the Bay City, Michigan vicinity. As such, a congressional committee would not be able to override the law. None of these EPA officials were able to document their assertions.

- The Director, OARM-RTP received correspondence from the agent that represented the owner of the Kahn building. This correspondence addressed the building's floor strength and EPA's requirements, months before these requirements were advertised. Although this correspondence was received in connection with public business, we were only able to obtain it by subpoenaing the agent's records. EPA did not retain any of the documentation.
- The addition of the NESC project to the existing contract violated the Competition in Contracting Act. Such additional work should have been competitively procured as a new contract. Although OAM officials claimed to have written a "Justification for Other than Full and Open Competition," they were unable to provide us a copy.
- The Deputy Assistant Administrator, OARM asserted that
  he gave biweekly briefings, on the status of the NESC
  project, to the House Appropriations Committee. However,
  he was unable to provide any documents in regard to these
  briefings.
- The local Congressman requested that the NESC visitor center auditorium seating capacity be enlarged from 15 to 44 persons, the capacity of a school bus. No documentation of the decision or its basis was maintained.
- The Director, NDPD orally directed the contractor to change a conference room into a video conferencing room without the knowledge of the Contracting Officer. This decision should have been documented to protect the financial rights of the Government.

An EPA Contracts Specialist made the following comments:

Some things were not documented. [The Contracting Officer] directed things not to be documented. In some cases, it disappeared. Some key decisions were not documented. It depends on the CO to document or not.

I am not surprised there is no documentation. He [the Project Officer] would tell me not to E-Mail him but to call. Everything was verbal, with no paper trail.

An OAM financial monitoring review in 1992 identified problems with the Project Officer's documentation practices. Although the Project Officer made a commitment to improve, we found that he failed to maintain contract files, internal correspondence, contractor correspondence, or payment files. EPA's "Contract Administration: A Guide for Project Officers" explains that:

The need to maintain proper records, logs, and reports cannot be emphasized enough. The Project Officer's records are considered part of the official contract documentation. . . . The Project Officer should immediately, upon his or her designation, set up a contract administration and suspense file for the contract. All documents, including internal memos, concerning the contract must be contained in the Project Officer's official files.

Agency personnel provided us the following statements concerning the preservation, maintenance, and safeguarding of Project Officer records. Initially they told us that technical direction was verbal. Next they told us that these files were expendable, i.e., they did not have to be maintained after the contract ended. However, upon learning that such records must be retained this argument was withdrawn. Then they told us, "Right, wrong, or indifferent, we have no further documentation on the . . . contract." Next they told us that the Project Officer files had been boxed up and sent to the contracting office. However, there was no record of shipment, the files were never received, nor were they expected. Finally, they told us that most of the files had been destroyed at the end of the contract. If true, this violated 44 U.S.C. 3105.

#### CONCLUSION

EPA failed to make and preserve documentation of significant decisions and activities in accordance with laws, regulations, and policy. Such documentation was needed to protect the legal and financial rights of the Government. The conflicting statements by EPA officials further demonstrate the importance of documentation.

#### **RECOMMENDATIONS**

#### We recommend the Deputy Administrator:

- 6-1) Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct regulations and related policies and procedures against officials who violated the Federal Records Act and the Records Disposal Act by concealing, removing, or destroying any records or documents.
- 6-2) Hold Agency personnel accountable for the maintenance of all documents related to decisions and input into the decision making process.

We recommend the Acting Assistant Administrator for Administration and Resources Management:

- 6-3) Provide training to Senior Level Managers, Contracting Officers, Project Officers, and other staff with contracting duties on the Federal Records Act, the Record Disposal Act, implementing regulations, and EPA policy affecting the retention of records.
- 6-4) Initiate a review of other EPA contracts to identify documentation problems and ensure adequate corrective action is taken.

#### AGENCY COMMENTS AND OIG EVALUATION

OARM Response to Recommendations 6-1 & 6-3 (Draft Report 6-1 and 6-2) The response by OARM generally agreed with the findings and the recommendations. OARM's response in its entirety is contained in Appendix III.

The OIG has not, at this time, made available for Agency review certain Office of Audit work product materials. The OIG has advised us (1) that our access to such materials would not advance resolution of any audit report findings, and (2) that the materials at issue are potentially only germane to a determination of whether, and to what extent, personnel actions might be appropriate.

It is our understanding that, after all other audit issues are resolved, the OIG will make available to us its work product materials relevant to the personnel issue. Once the OIG has released such information, OARM will review it and take appropriate personnel actions as warranted.

#### OIG Evaluation

The actions planned by OARM should meet the intent of the recommendations. We will provide access to the documents required after all audit report issues are resolved.

#### OARM Response to Recommendation 6-2 (Draft Report 6-3)

OARM agreed that training regarding the Federal Records Act and related requirements would be valuable. OARM will develop record keeping requirements for documenting important decisions and conduct training to all level of employees.

#### **OIG Evaluation**

The actions planned by OARM should fulfill the intent of the recommendation. No further action is required.

# OARM Response to Recommendation 6-4

Beginning in FY 1997, the Office of Acquisition Management (OAM) will review, by program office, a representative sampling of contracts for potential documentation problems.

#### **OIG Evaluation**

The action planned by OAM should alleviate the problem. We request that OAM forward to us the results of its review.

#### APPENDIX I

#### RELEVANT LAWS AND REGULATIONS

#### **CHAPTER 1**

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, P.L. No. 101-507, 104 Stat. 1372 (1990)

That notwithstanding any other provision of law, the lease or purchase of a computer, from funds appropriated under this paragraph, to support the regional acid deposition monitoring program, and the planning and site acquisition for a new EPA Center for Ecology Research and Training, shall be established in the Bay City, Michigan vicinity. . . .

Conference Report, to accompany H.R. 5158, H.R. 101-900, 101st Cong., 2d Sess. (1990)

\$8,700,000 is for the lease/purchase of a high performance supercomputer to support the regional acid deposition monitoring program. . . .

Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995, P.L. No. 104-19, 109 Stat. 238 (1995)

\$9,806,805 are rescinded: *Provided*, That notwithstanding any other provision of law, the Environmental Protection Agency shall not be required to site a computer to support the regional acid deposition monitoring program in the Bay City, Michigan, vicinity.

#### **CHAPTER 2**

40 U.S.C. 490, 1950 Reorganization Plan No. 18, Section 1

All functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in Government-owned buildings), are hereby transferred from the respective agencies in which such functions are now vested to the Administrator of General Services. . . .

#### 41 CFR 101-18.101(a)(1990)

GSA will perform all functions of leasing building space, and land incidental thereto, for Federal agencies.

#### 41 U.S.C. 14

No land shall be purchased on account of the United States, except under a law authorizing such purchase.

United States General Accounting Office, Principles of Federal Appropriations Law, Chapter 4

[A]n agency cannot do indirectly what it is not permitted to do directly. Thus, an agency cannot use the device of a contract or grant to accomplish a purpose it could not do by direct expenditure.

United States General Accounting Office (GAO), "Standards for Internal Controls in the Federal Government." 1983

Internal control systems are to reasonably ensure that the following objectives are achieved:

Obligations and costs comply with applicable law.

All assets are safeguarded against waste, loss, unauthorized use, and misappropriation.

Revenues and expenditures applicable to agency operations are recorded and accounted for properly so that accounts and reliable financial and statistical reports may be prepared and accountability of the assets may be maintained.

Internal Control Standards - General Standards

<u>Supportive Attitude</u>. Managers and employees are to maintain and demonstrate a positive and supportive attitude toward internal controls at all times.

<u>Competent Personnel</u>. Managers and employees are to have personal and professional integrity and are to maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal controls.

Internal Control Standards - Specific Standards

Recording of Transactions and Events. Transactions and other significant events are to be promptly recorded and properly classified.

Execution of Transactions and Events. Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority.

<u>Separation of Duties</u>. Key duties and responsibilities in authorizing, processing, recording, and reviewing transactions should be separated among individuals.

<u>Supervision</u>. Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved.

Executive Office of the President, Office of Management and Budget, June 21, 1995 revision to Circular No. A-123

As Federal employees develop and implement strategies for re-engineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls. . . .

#### CHAPTER 3

Legislative History of the Competition in Contracting Act of 1984

[C]ompetition is not a procurement procedure, but an objective which a procedure is designed to attain. . . . The last, and possibly the most important, benefit of competition is its inherent appeal of 'fair play.' Competition maintains the integrity in the expenditure of public funds by ensuring that government contracts are awarded on the basis of merit rather than favoritism. . . . The Attorney General has interpreted congressional intent as 'preventing favoritism . . . and the notorious mischief of making contracts privately.'

B-265869, January 2, 1996

The Competition in Contracting Act... requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices... it is a fundamental principle of competitive negotiation that offerors must be treated equally by a procuring activity.

<u>Latecoere International, Inc.</u> v. <u>United States of America Department of the Navy</u>, 19 F.3d 1342 (11th Cir. 1994)

Courts reviewing award of government contract should be concerned with whether contracting agency provided coherent and reasonable explanation of its exercise of discretion. . . .

Proof of subjective bad faith by procuring officials, depriving bidder of fair and honest consideration of its proposal, generally constitutes arbitrary and capricious action; bad faith includes predetermining the awardee or harboring prejudice against plaintiff.

#### Parcel 49C Limited Partnership v. The United States, 31 F.3d 1147 (Fed. Cir. 1994)

Law of Procurement does not tolerate actions reflecting personal predilections of administrative officials, whether ascribable to whim, misplaced zeal, or impermissible influence.

#### 41 U.S.C. 423(b)

Prohibited conduct by procurement officials. During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly....

(3) disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

#### FAR 15.402(b)(1990)

Contracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. Government personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor.

#### **CHAPTER 4**

31 U.S.C. 1341(a)(1)

An officer or employee of the United States Government . . . may not . . . (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

31 U.S.C. 1349(a)

An officer or employee of the United States Government . . . violating section 1341(a) or 1342 of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

31 U.S.C. 1350

An officer or employee of the United States Government . . . knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

31 U.S.C. 1351

If an officer or employee of an executive agency . . . violates section 1341(a) or 1342 of this title, the head of the agency . . . shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

69 Comp. Gen. 292

In determining the materiality of a modification, we consider factors such as the extent of any changes in the type of work, performance period . . . whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes during the course of the contract . . . or whether the modification is of a nature which potential offerors would reasonably have anticipated under the changes clause.

B-188408, June 19, 1978

[A]n existing contract may not be expanded so as to include additional work of any considerable magnitude, unless it clearly appears that the additional work was not in contemplation at the time the original contract was entered and is such an

inseparable part of the original work that it is reasonably impossible of performance by any other contractor. . . .

#### 35 Comp. Gen. 715

It is a well-established rule that appropriated funds may not ordinarily be used for the permanent improvement of private property unless specifically authorized by law. This rule is based upon the fact that no Government official, in the absence of specific legislation, is authorized to give away Government property.

#### 19 Comp. Gen. 679

Practically all air traffic between Panama and points in Central America passes in the vicinity of the Gulf of Dulce. Because of exceptionally bad weather peculiar to this locality during the rainy season extending over approximately eight months of each year, many Army aircraft have experienced considerable difficulty in the vicinity of the Gulf of Dulce. Recently three airplanes were lost and one fatality occurred in this area because of dangerous weather conditions.

Your decision is accordingly requested as to whether funds appropriated . . . may be used for the payment of proposed improvements as a temporary emergency measure . . . the fact would still remain that there is involved a proposed expenditure of public funds on private property and for a purpose for which no provision is made in the appropriation acts involved.

For the foregoing reasons the question you submit must be, and is, answered in the negative.

EPA Contracts Management Manual, Chapter 5.5, Improvements to Non-Government Realty, Section b(1)

<u>D&F</u>. Prior to award of a contract described in paragraph 5.5a above, the Contracting Officer shall prepare and forward a D&F to the Director, Procurement and Contracts Management Division (PCMD). The D&F shall be concurred with by legal counsel prior to submittal to the Director. The D&F shall be based on the following information which the Project Officer shall provide:

- (a) A review of the authorities, policies, and requirements of the appropriate statutory authority or of 42 Comp. Gen. 480 as applied to the procurement;
- (b) A description of the procurement, including identification of the funds to be used, contract type, property or services being procured, name of Contractor, and any urgency considerations or special circumstances;

- (c) A description of the research, development or test facilities or equipment, or other improvement to be provided to or acquired by the Contractor at Government expense. This description shall include the estimated cost of the improvement; information regarding ownership of the realty to which the improvement will be affixed; whether the improvement is severable from the realty without unreasonable expense or loss of value; whether the proposed improvement has general utility apart from performance of the instant contract; and an explanation of why the proposed improvement is necessary for performance of the contract;
- (d) Definition of the arrangement under which the improvement will be provided (e.g., loan, lease, or other arrangement) and a description of the proposed contract provisions to protect the interests of the Government including:
  - 1. Reimbursement to the Government for the fair value of the improvement at contract completion; or
  - 2. Options afforded the Government to acquire an interest in the underlying land; or
  - 3. Alternative provisions to protect the interests of the Government in the facilities, together with a rationale for considering such provisions to be adequate.
- (e) Documentation of negotiations conducted and arrangements made to segregate and locate the Government-owned property so that it is readily accessible from public thoroughfares and to obtain written agreements from the real property owner that the Government or another Government Contractor will have the right to use and operate the property upon termination or completion of the contract. (In cases where such an agreement is not obtained, document the negotiation effort).

#### FAR 43.102(a)(1991)

Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not -

- (1) Execute contract modifications;
- (2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or

(3) Direct or encourage the contractor to perform work that should be the subject of a contact modification.

#### CHAPTER 5

41 U.S.C. 254(b)

The cost-plus-a-percentage-of-cost system of contracting shall not be use. . . .

41 U.S.C. 253a(a)(1)

In preparing for the procurement of property or services, an executive agency shall-

- (A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;
- (B) use advance procurement planning and market research; and
- (C) develop specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

41 U.S.C. 253(f)

Justification for use of noncompetitive procedures. (1) [A]n executive agency may not award a contract using procedures other than competitive procedures unless-

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification. . . .

B-221559.2, July 31, 1986

[A] competitive IFB is not converted into a sole source procurement when only one bid is received if it can be demonstrated that firms other than the sole responsive bidder could have met the requirements.

GSBCA No. 8329-P-R., April 10, 1986

An automatic data processing equipment solicitation under which forty-nine firms were solicited, but only one responsive bid was received, was an ill-conceived

solicitation that resulted in less than the full and open competition required by the Competition in Contracting Act. The response obtained by the solicitation was so limited as to excite inquiry, and a full explanation of the limited response disclosed that in fact full and open competition was not obtained.

#### 41 U.S.C. 254(d)

Submission of cost or pricing data by contractors and subcontractors; certificate; adjustment of price; inspection of books, records, etc.; necessity of data; exceptions.

- (1) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of such contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current. . . .
- (2) Any prime contract or change or modification thereto under which a certificate is required under paragraph (1) shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the agency head that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties . . ., were inaccurate, incomplete, or noncurrent.

## Legislative History of the Competition in Contracting Act of 1984

In Government contracting, competition is a marketplace condition which results when several contractors, acting independently of each other and of the government, submit bids or proposals in an attempt to secure the government's business . . . competition in contracting saves money. . . . In 1977, the Defense Science Board (DSB) examined more than a dozen examples of completed contracts . . . [and] concluded that competition is a powerful motivator for cost control. . . .

[A]mendments addressed congressional concern over noncompetitive contract prices being negotiated based on defective data submitted by contractors. This provision of the amendments, referred to as the Truth in Negotiations Act, required contracting officers to obtain all 'current, complete and accurate' cost and pricing data submissions from contractors in certain negotiated contracts. . . .

#### FAR 15.806-1(a)(1)(1990)

The contracting Officer is responsible for the determination of price reasonableness for the prime contract. In order to make this determination, it is required that an analysis be conducted of all the relevant facts and data including subcontractor cost or pricing data required to be submitted, results of the prime or higher tier subcontractor's analyses of subcontractor proposals, the field pricing support (if any), and historical pricing data. . . .

#### FAR 15.806-1(a)(2)(1990)

The contractor . . . shall:

(i) Conduct price analysis and, when the subcontractor is required to submit cost or pricing data, or if the contractor . . . is unable to perform an adequate price analysis, cost analyses for all subcontracts. . . .

#### FAR 15.801(1990)

'Cost or pricing data' means all facts that, as of the date of price agreement . . . prudent buyers and sellers would reasonably expect to affect price negotiations significantly. . . . Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs. . . . They also include such factors as-

- (a) vendor quotations;
- (c) information on changes in production methods and in production or purchasing volume;
- (h) information on management decisions that could have a significant bearing on costs.

#### FAR 44.202-2(a)(1990)

The contracting officer responsible for consent shall review the request and supporting data and consider the following. . . .

- (5) Was adequate price competition obtained or its absence properly justified. . . .
- (7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

- (8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?
- (9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
- (10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?
- (11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements....

#### FAR 45.505(c)(1990)

Official Government property records must identify all Government property and provide a complete, current, and auditable record of all transactions. The contractor's systems of records maintenance shall be sufficient to adequately control Government property as required by this section.

#### **CHAPTER 6**

44 U.S.C. 3301

As used in this chapter, 'records' includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.

44 U.S.C. 3105

The head of each Federal agency shall establish safeguards against the removal or loss of records he determines to be necessary and required by regulations of the Archivist. Safeguards shall include making it known to officials and employees of the agency-

(1) that records in the custody of the agency are not to be alienated or destroyed except in accordance with sections 3301-3314 of this title, and

(2) the penalties provided by law for the unlawful removal or destruction of records.

#### 18 U.S.C. 641

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record ... of the United States or of any department or agency thereof . . .

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### 18 U.S.C. 2071

- (a) Whoever wilfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.
- (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, wilfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States.

#### 44 U.S.C. 3101 -

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the 'Government and of persons directly affected by the agency's activities.

#### 36 CFR 1222.38(1990)

Agency recordkeeping requirements shall prescribe the creation and maintenance of records of the transaction of agency business that are sufficient to:

- (a) Document the persons, places, things, or matters dealt with by the agency.
- (b) Facilitate action by agency officials and their successors in office.
- (c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
- (d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.
- (e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).
- (f) Document important board, committee, or staff meetings.

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#### APPENDIX II

#### **ACRONYMS**

AC&C Abatement, Control and Compliance

CFR Code of Federal Regulations

CO Contracting Officer Comp. Gen. Comptroller General

EPA Environmental Protection Agency
FAR Federal Acquisition Regulation

FM Facilities Management

FM\$D Facilities Management and Services Division

FTS Federal Telecommunications System
GAO United States General Accounting Office

GSA General Services Administration

GSBCA General Services Administration Board of Contract Appeals

NESC National Environmental Supercomputing Center

NDPD National Data Processing Division
OAM Office of Acquisition Management

OARM Office of Administration and Resource Management

OGC Office of General Counsel
OIG Office of Inspector General

OMB Office of Management and Budget

PWA Project Work Authorization

RADM Regional Acid Deposition Monitoring Program

RTP Research Triangle Park

S&L Savings & Loan U.S.C. United States Code

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#### APPENDIX III

#### AGENCY'S RESPONSE TO THE DRAFT REPORT



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

[Sep 20, 1996]

#### **MEMORANDUM**

SUBJECT: Draft Report of Audit on the Establishment

of the National Environmental Supercomputing

Center in Bay City, Michigan

FROM: Alvin M. F

Alvin M. Pesachowitz /s/

**Acting Assistant Administrator** 

for Administration and Resources Management (3101)

TO:

Elissa R. Karpf

Deputy Assistant Inspector General

for Acquisition and Assistance Audits (2421)

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report on the establishment of the supercomputer center in Bay City, Michigan.

We are in general agreement with the recommendations of the report. As we discussed, after all of the other audit issues are resolved, the OIG will make available the materials that are potentially germane to determine whether, and to what extent, personnel actions might be appropriate. We are particularly concerned with the appearance of the pre-selection of the Kahn building as the supercomputer site and the treatment of records by EPA officials. We agree that training is an important part in effecting corrective action. Training, however, needs to be coupled with increased oversight, management integrity, and accountability.

We have already taken, and continue to take, actions towards this end. These actions include revamping the Unisys Corporation follow-on contract to require the issuance of contracting officer-approved work assignments before work is allowed to begin, and making contract management a key element of the award fee plan. In addition, the administration of this contract has been transferred to the Contracts Management Division in Research Triangle Park, North Carolina to increase accessibility to, and customer service from, the contracting office. Likewise, the Office of Acquisition Management has sent a letter to the Unisys Corporation (Unisys) requesting that one of its employees participate in an interview to help resolve some of the issues raised by the audit.

The Office of Administration and Resources Management (OARM) and EPA's Comptroller and Office of General Counsel agree that EPA did not violate the Anti-Deficiency Act. The lease was a subcontract between the Unisys Corporation and J&K Associates, and did not legally bind the Government. Regardless, in her consent of the subcontract, the contracting officer noted that the Government would not be held liable beyond the expiration of the prime contract. Nonetheless, we believe that training in this area would benefit Agency personnel at all levels.

The attached comments have been coordinated with the EPA Comptroller and the Office of the General Counsel. To simplify our response, the findings and recommendations are discussed by subject in the order of appearance in the report. Thank you for considering our comments in preparation of the final audit report.

We appreciate your identification of these issues for our attention. As our response indicates, we have already begun to initiate specific actions on your recommendations. We welcome any additional comments or suggestions you have concerning our actions.

If you have any questions or comments, please feel free to call me at 260-4600, or have your staff call Susan Kantrowitz in the Office of Acquisition Management, at 260-8176.

Attachment(s)

#### **SUMMARY OF AGENCY POSITION**

In fiscal year (FY) 1991, Congress earmarked \$8.7 million for the "lease/purchase of a high performance supercomputer to support the regional acid deposition monitoring program." The Conference Report contained inconsistent language on the situs of the supercomputer. The Report contained language that the supercomputer should be in Bay City and other language specifying the Bay City vicinity. Because of this inconsistency, EPA officials consulted with members of the Appropriations Committee for guidance.

From the beginning and throughout the National Environmental Supercomputing Center (NESC) project, EPA officials sought and received guidance from the Committee and consistently tried to give meaning to inconsistent Congressional direction. We conclude, and as OIG has observed, in implementing Congressional direction, EPA officials made some mistakes.

The degree of significance that attaches to these errors turns largely on a predicate question, with respect to which there is fundamental disagreement between the involved offices and OIG: did the Agency have the authority to establish the mandated supercomputer facility through a contract vehicle, or, because establishment of the supercomputer necessarily required a facility, was EPA constrained to work through GSA to acquire the needed space? In our view, the facts demonstrate that at the time that the Agency opted in favor of using the Unisys contract for this purpose, Agency officials legitimately believed that a contract could serve as a acceptable alternative to acquiring space through GSA.

Indeed, the Agency continues to maintain that, properly executed, contracts can be used in this manner. Moreover, although, as suggested by the OIG, the extent to which the Agency's choice turned on the point is unclear, it does appear to be the case that the Agency lacked the authority to expend AC&C dollars for space rental payments to GSA for a Supercomputing facility and had not budgeted funds in the S&E account sufficient to cover the costs of such payments. Thus, as a practical matter, the only viable choices available to the Agency in following through on the Congressional mandate were to pursue the contract route using AC&C dollars or to pay to house the supercomputer out of the S&E account, at the expense of other S&E activities.

If one concludes that the Agency lacked the authority to use a contract vehicle in the first instance, then the Agency's course of dealing throughout the project, predicated as it was on the contract theory, was necessarily problematic. If, on the other hand, one concludes that the contract route was an option that the Agency reasonably relied upon, then the Agency's implementation errors, while not insignificant, appear less dramatic. We subscribe to the latter view, believing that, fundamentally, this matter concerns an attempt by the Agency to use all of

he tools available to it to deliver on a congressional mandate using the funds specifically earmarked for that purpose.

This being said, we do believe that EPA officials played an inappropriately intrusive role in the contractor's lease of the interim NESC site. At a minimum, the EPA officials' conduct created the impression that the interim site had been "pre-selected" by EPA. Moreover, the course of dealing appears to have been inconsistent with contracting principles and Agency policy concerning Agency involvement with subcontractors. In addition, we recognize that some documents of records were not properly created and maintained. As it appears that a significant amount of contract related "business" was conducted orally or via the electronic mail system without a permanent written record created.

On the other hand, OARM and EPA's Comptroller and General Counsel agree that EPA did not violate the Anti-Deficiency Act. The subcontract between Unisys Corporation (Unisys), the Agency's primary computer center management contractor and J&K Associates (J&K) did not legally obligate EPA to make lease payments for any period of time. Additionally, although one pricing feature of the Kahn building lease may have been excessive, we believe that the cost of the interim NESC facility is comparable to other leased supercomputer facilities. The Agency is presently completing an evaluation of the most cost effective way to satisfy all of its high performance computing support needs.

We agree with most of the report's recommendations for training and guidance. In some cases, we believe we have already met the intent of the recommendation(s). Pursuant to our agreement with the OIG, OARM will address the accountability associated with these issues once the other audit issues are resolved.

#### SCOPE IMPAIRMENTS

We do not disagree that the OIG's inability to interview a contractor employee involved in the subcontracting and renovation of the Kahn building has limited the Agency's understanding of the establishment of the NESC.

The report, however, reflects a misunderstanding regarding the Agency's willingness to assist the OIG in this regard. While, as previously communicated to OIG, EPA cannot, under its contract with Unisys, compel the contractor to make a specific employee available for interview by the OIG, OAM has recently written Unisys to urge participation by its employee in the interview with the OIG in the hope of facilitating the investigation. (See Attachment 2).

#### **FACTUAL OVERVIEW**

The Agency's FY 1991 appropriation, Public Law 101-507, provided \$8,700,000 in two-year AC&C funds "for the lease/purchase of a high performance supercomputer to support the regional acid deposition monitoring program. "The Conference Report contained contradictory

instructions about where the supercomputer was to be located: one portion of the report indicated that it should be located in the vicinity of Bay City, while another section stated that the facility should be located in Bay City. EPA officials consulted with members of the Appropriations Committee about the contradictory guidance, and it was their understanding that the intention was to have the new facility located within Bay City.

In the winter of 1990-91, EPA officials visited Bay City and contacted a local realtor about the availability of suitable space for the interim NESC facility. The realtor identified two properties, only one of which (the Kahn building) was located inside the boundaries of Bay City. The Kahn building was a vacant factory. The other property, located near Bay City, was being used as a central banking computer center. Agency officials concluded that in addition to our understanding of the Congressional direction to locate the NESC in Bay City, there were sound business reasons for locating the interim facility near the Research Vessel Lake Guardian and the likely permanent site of the Center for Ecology Research and Training (CERT) facility. Accordingly, it was decided that the Agency's requirement could be satisfied only by a site located in downtown Bay City.

EPA officials decided in early 1991 that Unisys, would be tasked to "[p]rovide staff, facility, supplies and other support as necessary to implement and operate an EPA supercomputer center at Bay City." The EPA decision to provide the supercomputer to a contractor and to task the contractor to properly house the supercomputer was based on the Agency's lack of legal authority to acquire a facility and its recognition that utilization of the General Services Administration's (GSA's) acquisition process would entail a number of months. Accordingly, on February 22, 1991, EPA issued PWA 98-91 tasking Unisys to establish supercomputing services in Bay City.

In the ensuing months, EPA officials communicated directly with the real estate agent, the Kahn building owner, the prospective developer, and Unisys about the evolving plans for renovating that site for the NESC. These communications appear to have been premised on the EPA officials' assumption that the Kahn building, which would require extensive renovations, was the only suitable, available structure in Bay City for the interim NESC site. On May 28, 1991, Unisys published a newspaper advertisement seeking approximately 14,000 square feet of space in a single facility to house a supercomputer center within the city limits of Bay City. By the closing deadline of June 28, 1991, Unisys had received only one expression of interest--from the Kahn building owner and developer.

Subsequently, Unisys conducted lease negotiations with the Kahn building developer. Although these negotiations were closely coordinated with EPA officials, the transaction itself was between Unisys and J&K Associates (J&K), the building owner. The lease provided for a base period of five years with five one-year options to extend the lease. The lease included an assignment clause which allowed the lease to be assigned to a successor contractor in the event Unisys did not win the recompete of their contract with the Agency when it expired in 1992.

The CO consented to the lease on December 2, 1991. The CO included a provision that the Government would not be liable for any lease costs after September 30, 1992, the expiration date of the contract with Unisys.

#### **CHAPTER 2**

## EPA CIRCUMVENTED GSA TO ACQUIRE THE BUILDING

The OIG maintains that EPA circumvented GSA by acquiring space for its own use through a contractor. In so doing, the OIG believes the Agency violated the Federal Property and Administrative Services Act of 1949, and further alleges that EPA paid approximately \$3.8 million more to lease and renovate the Kahn building than it would have cost to purchase such a building outright.

As an initial matter, EPA did not lease, sublease, or acquire any other interest in the real property under the subject computer support services contract. The lease for the NESC facility, executed on October 31, 1991, was a binding agreement between Unisys and J&K Associates. The lease was subsequently assigned by Unisys to Martin Marietta Technical Services when Martin Marietta won the recompete of the Unisys contract. The United States is not a party to the lease, is thus not liable under the lease, and has no standing to contest or enforce the provisions of the lease.

The FY 1991 funds for the Bay City project were appropriated in the Abatement, Compliance, and Control (AC&C) account. EPA could not use the AC&C account to pay for rent to GSA because EPA had already committed itself to using Salary and Expense (S&E) funds for such purposes during this time frame. The 1987 EPA Directive the OIG relies on to support the availability of other accounts was superseded in 1989 with the implementation of the Integrated Financial Management System (IFMS). Consequently, the only viable means available to the Agency to secure space for housing the supercomputer was through a contract vehicle using AC&C dollars such as the Unisys contract. In addition, EPA had no authority to acquire any real property for the purpose of housing the supercomputer.

#### I. Alleged Circumvention of GSA

Comptroller General decisions establish that it is not improper for agencies to require contractors to lease space in performance of a contract. EPA's project work authorizations (PWAs) for the subject procurement required the contractor to provide supercomputing services. PWA 98-91 specifically tasked the contractor to, "[p]rovide staff, facility, supplies and other support as necessary to implement and operate an EPA supercomputer center at Bay City." The purpose of the subject contract was not to provide general purpose space for the primary use of EPA. Rather, its purpose was to acquire supercomputing support services. As such, the leasing

<sup>&</sup>lt;sup>1</sup>See e.g., <u>Metropolitan Federal Network</u>, B-232096, November 21, 1988, 88-2 CPD para. 495; <u>Canaveral Maritime</u>, Inc., Request for Reconsideration, B-231857.6, 89-2 CPD para. 330; <u>Department of Health</u>, <u>Education and Welfare</u>, 46 Comp. Gen. 25 (1966).

of the space by Unisys was not prohibited or inconsistent with Federal property regulations.

Moreover, contractors are required to furnish all facilities required for the performance of Government contracts. FAR part 45 specifically states that Agencies shall not furnish facilities to contractors for any purpose except as specifically allowed by FAR subpart 45.302. Likewise, space leased by private sector entities performing work on Government contracts is expressly not considered to be Federal space for purposes of the FPMR. The fact that there is space within the contractor's leased facility for EPA employees to use for purposes of managing the contract does not make such space "Federal" space under the guidelines of the FPMR. Likewise, we find that inclusion of the teleconferencing facilities and auditorium as part of the NESC was appropriate since these spaces were used primarily by the contractor in the performance of the contract, including collaborative efforts with non-Government researchers, symposia, and user support.

At the time of the decisions at issue, only two appropriations were theoretically available to pay for the housing of the supercomputer: the Buildings and Facilities account (B&F) (available for purchase or construction of a facility) and the S&E account (available to pay rental charges). However, no budgeted amounts for this purpose had been included in either of these accounts. The nonavailability of the B&F and S&E accounts meant that the only monies available to facilitate the housing of the supercomputer were the AC&C monies contained in the appropriation authorizing the acquisition of the supercomputer. However, EPA was prohibited from using AC&C funds to pay for intramural (EPA internal) activities, including rent to GSA for space. AC&C monies were available for payment of contract related activities. Agency officials concluded that to the extent that the supercomputer was provided to Unisys as government furnished property, the costs Unisys incurred for housing the computer were allowable for payment under the account using AC&C monies.

The OIG maintains that AC&C monies were available to pay GSA for rental of space for the supercomputer; that the Agency previously paid GSA rent out of AC&C funds; and that it was only Agency policy that prohibited the practice. The OIG relies on summary level budget documentation (Attachment 3) which shows direct obligations within summary object classification 23.1, "Rental Payments to GSA." This document summarizes and includes obligations in the sub-object classes that are merged into 23.1, and makes it appear that EPA did pay rent to GSA out of the AC&C account. The OIG asserts that EPA selectively enforced this policy by abiding by the prohibition on using AC&C funds to pay GSA for rent, and ignoring it to pay for ADP contracts. We disagree. EPA's financial structure and policies must reflect Congressional appropriations and laws. Even if EPA's policy prohibited use of AC&C funds for the ADP Contract as the OIG believes, that policy would have been superseded by the appropriation for the supercomputer. Authorizing language in EPA's FY 1991 AC&C appropriation stated that the computer was to be leased or purchased "notwithstanding any other provision of law" and with AC&C funds. Therefore, EPA was specifically directed and authorized by Congress to use the AC&C appropriation for the supercomputer.

By way of clarification, we have attached several documents to show that no rent payments were made out of the AC&C account during FYs 1991 and 1992. Attachment 4 provides a cross reference of several different EPA sub-object classes that are merged into the single 23.1 object class. Besides the Standard Level User Charges (sub-object class 23.10), these include communication sub-object classes, such as 23.11 for local and 23.13 for long distance telephone service. Attachment 5 defines some sub-object classes that were in effect during FY 1991. The proper code for GSA rental assessments for space and related services is the previously mentioned 23.10, "Standard Level User Charges." All space rental payments to GSA should have been charged to this code. Attachment 6 provides detailed sub-object class charges within various appropriations for the 23.00 summary object class "Rent, Communication & Utilities" for FYs 1991 and 1992. In neither year is any charge made to the Standard Level User Charges sub-object class (23.10) out of the AC&C appropriation. In contrast, 23.10 is used for rental payments to GSA under other appropriations, such as the Program, Research and Operations account. Additional discussion of this issue is contained at Attachment 7.

#### II. Lease versus Purchase

As stated above, EPA had two choices in determining the manner in which the supercomputer should be housed, maintained, and operated. The OIG asserts that EPA's decision not to seek a procurement of leased space from GSA was "inefficient," and a violation of law. The OIG asserts that "had EPA engaged the services of GSA and bought the building, the Agency could have saved approximately \$3.8 million over the five year lease period." OARM takes exception to the OIG's claim that the Government paid \$3.8 million more to lease and renovate the building than it would have cost to purchase such a building outright.

As we have noted above, EPA did not have the legal authority or the appropriate funding to purchase a building. Even if EPA had been delegated the legal authority and the funding to purchase real property for housing the supercomputer, there is no information to conclude that EPA paid \$3.8 million more under its contract with Unisys for the lease and renovation of the Kahn building than it would have cost to purchase such a building outright. As we will explain in our response to Chapter 4, EPA's interpretation of the language from Conference Report 101-900 for fiscal year 1991 led us to pursue a location within the city limits of Bay City. Hence, the second (bank) facility referred to by the OIG which was located outside the city limits of Bay City, did not fulfill what we understood to be the intent of the FY 1991 appropriations act.

This notwithstanding, the cost to purchase the second (bank) facility identified by the OIG at the time of the consummation of the Unisys lease was approximately \$2.5 million. The fact that the building sold for \$900,000 two years later is irrelevant. The reduction in price did not accurately reflect what EPA might have paid for the facility at the time of the commencement of the lease. Such a drastic reduction likely was due to a declining economy and depressed real estate market during that two year period. Regardless, we believe extensive renovations to the second facility would have been required to bring it up to the minimum standards for housing a supercomputer. Furthermore, there would have been additional costs associated with a

fragmented presence in the Bay City area (shuttle buses, security services, etc.) or a presence not closely located to the likely site of the CERT.

Secondly, if the Agency had elected to request that GSA seek a procurement of leased space, the requirements of 40 U.S.C. § 606 et seq. would have been triggered. These requirements, generally referred to as the "prospectus" requirements, would have required a lengthy and involved prospectus application, and the approval of two committees of Congress. A realistic estimate of the time needed for the preparation, submission and approval of a prospectus for ADP leased space is eighteen (18) to twenty four (24) months. Thus, even if the AC&C appropriation for the supercomputer had been available for the payment of rent to GSA, their availability would have expired prior to the award of any GSA lease. Further, the OIG ignores the fact that a GSA lease procurement in Bay City, Michigan would have included the same above standard, unique costs related to housing the supercomputer facility.

We agree with the OIG's assertion that acquisition of leased space by a contractor is more expensive than direct acquisition by the Government. This is one of the primary reasons that construction of a permanent supercomputer facility was under consideration for inclusion in the proposed CERT. This did not change the fact, however, that the appropriation for the supercomputer was limited in time, and had to be acted upon by the Agency immediately. Thus, the decision was made to provide for the interim housing of the supercomputer under the subject computer support services contract.

The OIG asserts that the costs of preparing the leased facility for the supercomputer should have been spread over the "40-year life of the building." Notwithstanding the fact that the useful life of such a facility is more likely 20-30 years, the OIG completely ignores the typical manner in which space renovation costs are allocated over the term of a lease. Base building costs, which are the costs to bring a facility up to basic habitability, are typically borne by the lessor and spread over the useful life of the facility, regardless of an existing lease term. Above standard costs, unique to a particular leasehold interest, are always allocated over the specific term of the lease. The unique and special renovations made to the subject lease space to accommodate the unique requirements of Unisys to house the supercomputer were allocated over the term of the lease, as is typical for real estate industry practice. As such, it is appropriate that the above standard changes directed by Unisys were amortized over the term of the lease.

#### RECOMMENDATIONS

The draft audit report recommends the Deputy Administrator require the Acting Assistant Administrator for OARM to:

2-1) Contact GSA to arrange for an immediate transfer of management of the NESC building to that Agency.

EPA does not own the building that houses the NESC facility, nor is the Agency a party

to the lease for said building. The lease was an agreement solely between Unisys and J&K, (now an agreement between J&K and Martin Marietta Technical Services). Accordingly, EPA has no authority, contractual or otherwise, to transfer management of the NESC building to GSA.

OARM has initiated a study to determine the best way to obtain in the future, high performance computing support. The study should be completed in December 1996.

2-2) Review all office and other space arrangements where costs are charged direct to contracts, and ensure the space arrangements were established and are managed in compliance with law and regulation.

Each year, OAM plans its Acquisition Management Review (AMR) program. Oversight reviews of EPA regional offices, program offices, and contracting activities are conducted as part of OAM's management control procedures. Management, operational, and procedural issues are evaluated, including staffing, workload, and compliance with Federal and Agency acquisition regulations, policies and procedures.

As a consequence of the AMR, OAM issues a written report to the Senior Resource Official (SRO) with findings, observations, and recommendations. The SRO is required to respond with an action plan with milestones. Corrective action plans are validated by OAM upon re-review of the relevant office.

Beginning with our FY 97 AMR program, OAM will review, by program office, a representative sampling of contracts likely to have such office or other space arrangements, to ensure they were established and are managed in compliance with law and regulation.

In addition, OAM will also take advantage of special training opportunities (such as the annual EPA procurement conference) to conduct special training for contracting and project officers regarding space arrangements. Training will be accomplished in FY 1997.

2-3) Provide training to OARM officials on: the Federal Property and Administrative Services Act of 1949; Title 41 US Code, Section 14; and, the Federal Property Management Regulations to ensure that future office and other space arrangements are obtained properly.

We agree that some training or dissemination of information regarding the cited Act and regulations would be beneficial to EPA managers, including contracting and project officers. Accordingly, we will determine an appropriate forum and mechanism for providing the training or distributing the relevant information during FY 1997.

#### The draft audit report recommends the Deputy Administrator:

2-4) Provide training to senior-level managers on the uses and limitations of appropriations.

We agree that Senior Resource Officials will benefit from training regarding the uses and limitations of appropriations. We will provide training in FY 1997.

2-5) Hold senior managers accountable for ensuring documented management controls are in place and followed in accordance with OMB Circular Number A-123.

We agree that senior Federal managers should be accountable for taking systematic and proactive measures to develop and implement appropriate, cost-effective management controls. The Agency has made great strides in strengthening management integrity at EPA since the time the Bay City events took place. The OMB Circular A-123 was modeled after EPA's "new" management integrity process (established 6/6/94), and was strengthened by, and is consistent with the EPA Order 1130.2, Senior Resource Officials (SROs) and Resource Management Committee, dated March 22, 1994.

SROs are the primary point of accountability for management integrity and are responsible for coordination of all integrity issues in their offices. Control problems which have been identified through internal, program, GAO, or OIG reviews are addressed and resolved at the appropriate levels. These issues are then routinely identified and reported on, through the Agency's normal management framework of the Mid-Year Report and the Agency's annual Assurance Letter which are provided to the Administrator and Deputy Administrator.

#### CHAPTER 3

#### EPA PRE-SELECTED THE SUPERCOMPUTER SITE

The audit report asserts that Agency officials visited Bay City, selected the building they wanted for the NESC, and then manipulated the procurement process to have an EPA contractor lease the building for Agency use. In so doing, the OIG maintains that Agency officials violated the intent of the Competition in Contracting Act (CICA) and the Procurement Integrity provisions of the Office of Federal Procurement Policy Act (Procurement Integrity Act).

We also believe that the communications between Agency officials and the subcontractors were inconsistent with the sound contracting principles embodied in Agency policies and raise concerns under the Agency's ethics rules. We agree that there is an appearance of pre-selection regarding the Kahn building. We disagree, however, that the Agency's actions resulted in violations of CICA or the Procurement Integrity Act.

#### I. Bay City Options

Congress earmarked \$8.7 million for the lease or purchase of a supercomputer in FY 1991, but did not grant EPA the authority or funds to acquire a facility to house it. In PWA 98-91, EPA tasked Unisys to provide the staff, facility and other support necessary to operate the supercomputer. As discussed in Chapter 2, due to conflicting language in the Conference Report, EPA officials sought and obtained guidance from members of the Appropriations Committee regarding the location of the supercomputer. Our understanding of the direction received from members of the Committee, as well as EPA's good faith interpretation of the language from the Conference Report, led Agency officials to pursue a site within the city limits of Bay City.

The limited number of available facilities in Bay City, coupled with the special environment required by a supercomputer (e.g., chillers, uninterrupted power supply, generators, monitoring systems, etc.), significantly limited the availability of appropriate buildings. Additionally, because the appropriation provided to purchase/lease the supercomputer was "two-year" contract money, Unisys was required to establish the supercomputer center, provide staff, and install the supercomputer and long-lead equipment within the eighteen months remaining in the funding period. In their effort to fulfill the intent of Congress and avoid the loss of the two-year funds then available for only 18 months, it appears that EPA personnel engaged in some premature market research and inappropriately inserted themselves in the contractor's acquisition of the leased space.

#### II. Alleged CICA Violation

We agree that every effort should be made to encourage competition at the subcontract level. It is incorrect to say, however, that FAR clause 52.244-5, Competition in Subcontracting, extends the CICA requirement of full and open competition to the award of subcontracts. CICA applies to the award of Federal contracts by COs, not to the award of subcontracts by prime contractors. The FAR coverage of these two different situations is explicit.

FAR subpart 6.101 entitled "Policy" under FULL AND OPEN COMPETITION, states that "... contracting officers shall promote and provide for <u>full and open competition</u> in soliciting offers and awarding <u>Government contracts</u> (emphasis added)." FAR clause 52.244-5, Competition in Subcontracting, states that, "The contractor shall select subcontractors on a competitive basis to the <u>maximum practical extent</u> consistent with the objectives and requirements of the contract (emphasis added)."

These are two very different mandates. The FAR does not extend the CICA requirement for full and open competition to the award of subcontracts. If that were the intent of the FAR, the clause cited above would require contractors to select subcontractors through full and open competition. It does not do so, but merely encourages competition "to the maximum practical extent." It also does not require prime contractors to obtain the approval of the Agency Competition Advocate for subcontracts awarded by other than full and open competition, nor does it require prime contractors to advertise their subcontracting opportunities in the Commerce Business Daily. Both of these are requirements for COs awarding Federal contracts.

#### III. Alleged Procurement Integrity Violation

Likewise, the Procurement Integrity Act applies only to procurements for Federal prime contracts. Sucontractors are subject to Procurement Integrity requirements when they are participating (e.g., as proposed team subcontractors with the prime contractor) in a procurement for a Federal prime contract. The subsequent award of a subcontract by a prime contractor is not covered by the Procurement Integrity Act.

The OIG draft audit report asserts that EPA officials violated statutory and regulatory Procurement Integrity requirements by disclosing source selection information to one source, months before Unisys Corporation advertised the need for supercomputer space. There is documentary evidence that EPA officials disclosed internal information about the space requirement to the Kahn Building owner and developer, and to the real estate agent. Such conduct did not violate the Procurement Integrity Act however, since the lease was a subcontract awarded subsequent to the award of the prime contract with Unisys.

Nonetheless, the disclosures may have violated 5 CFR § 2653.703, "Use of Nonpublic Information." This ethical conduct standard prohibits Federal employees from making knowing unauthorized disclosures of nonpublic information to advance the private interest of another

party. On the basis of the material in the draft audit report and the limited documentation furnished by the OIG, OARM is not, at this time, in a position to determine whether the EPA officials' disclosures were "knowing," or whether the status of the disclosed information was "nonpublic."

Assuming there may have been more than one suitable site in Bay City for the supercomputer, the conduct of the Agency project officials could have affected Unisys' ability to have a fully competitive acquisition. Advance disclosures to only one potential subcontractor source clearly would have conferred an unfair advantage and compromised the integrity of the subcontract competition Unisys conducted. This issue will be addressed in the Agency's training of project officers regarding proper interactions with subcontractors.

#### IV. Subcontract Consent

While it is clear that EPA project officials took an active role in locating and acquiring a suitable building for the Bay City supercomputer, we do not believe their conduct was intended to or resulted in a manipulation of the procurement process conducted by Unisys. Based on their firm belief that the supercomputer had to be located in Bay City, EPA project officers surveyed available sites located within the city limits. Only one potential site was identified. Later, when Unisys published an announcement in the Bay City Times on May 28-30, 1991, seeking sources for the NESC space, the only response was from the previously identified source. The fact that there was only one response, supported the findings of the market research conducted by Agency officials, i.e., that there were few, if any other buildings available for housing a supercomputer.

Nonetheless, the CO made a good faith effort, based on data submitted by Unisys, to determine that the negotiated lease cost was reasonable before consenting to the subcontract. The price of real estate is controlled by elements other than incurred costs plus profit or fee. The demand, uniqueness, and availability of property are all non-cost elements that control the price a lessor can obtain from the market. We believe the CO's decision to require Unisys to support its fixed-rate leasing cost by performing a price analysis, in the form of a comparison of rates, was reasonable.

#### V. Building Space Requirements

We disagree with the OIG, that the apparent pre-selection of the Kahn building resulted in an acquisition of a facility twice as large as required. The initial square footage estimates represents the Government's best estimate during the early stages of planning. For example, the 5,000 square footage estimate allowed only enough room for the supercomputer "foot print," that is, the actual supercomputer "box" or space upon which the actual supercomputer would sit, and not the requisite surrounding area necessary for the operation of such a supercomputer.

Specifically, this initial estimate did not include area for the support equipment (chillers, water storage tanks, computer air conditioners, uninterrupted power source, etc.), or office space

for staff required to run the supercomputer center. The second estimate of 14,000 square feet represented "usable space" and did not include the estimated 20% of non usable space needed for restrooms, storage, hallways, etc. The second and third square footage figures correctly state the facility size requirement as 20,600 feet and include the square footage needed for the actual supercomputer, support equipment, staff offices, reception area and nonissuable space.

#### RECOMMENDATIONS

The draft audit report recommends the Deputy Administrator:

- 3-1) Hold senior OARM officials who were responsible for the pre-selection of the NESC site accountable in accordance with the Agency's disciplinary guidance for noncompliance with the Competition in Contracting Act and related Federal policy objectives and regulations.
- 3-2) Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct regulations and related policies and procedures.

While we disagree that there have been any violations of CICA or the Procurement Integrity Act, we will look into possible violations of the standards of ethical conduct and the contracting principles embodied in Agency policy.

The OIG has not at this time made available for Agency review, certain Office of Audit work product materials. The OIG has advised us (1) that our access to such materials would not advance resolution of any audit report findings, and (2) that the materials at issue are potentially only germane to a determination of whether, and to what extent, personnel actions might be appropriate.

It is our understanding that, after all other audit report issues are resolved, the OIG will make available to us its work product materials relevant to the personnel issue. Once the OIG has released such information, OARM will review it and take appropriate personnel actions as warranted.

The draft audit report recommends the Deputy Administrator require the Acting Assistant Administrator for OARM to:

3-3) Require that CO and PO training courses emphasize CICA and related Federal policy objectives and regulations in order to ensure full and open competition is obtained, or its absence is properly justified.

We believe we have already met the intent of this recommendation. OAM has recently begun using standard, Federally-endorsed (Federal Acquisition Institute) training courses for

contracting personnel. A review of these materials indicates that CICA and related competition issues are heavily stressed.

OAM has also recently revised one project officer course and is in the process of revising another. Both courses currently emphasize, and will continue to emphasize, competition and related issues. In addition, OAM has new Contract Management Manual guidance, currently undergoing final Green Border review, on the roles and responsibilities of project officers in subcontract administration.

3-4 Require that contract and project officer training courses emphasize the Procurement Integrity provisions of the Office of Federal Procurement Policy Act to ensure source selection information is not released inappropriately.

We believe that the intent of this recommendation has already been met. A review of the contracting and project officer courses noted above indicates that Procurement Integrity and related ethics issues are also addressed.

In addition, and in accordance with the Office of Government Ethics (OGE), all contracting personnel and project officers are required to file standard form OGE 450, Confidential Financial Report, to determine possible conflicts of interest. Employees who file OGE 450 are also required to take an annual ethics course, much of which is dedicated to Procurement Integrity issues.

3-5) Conduct special training courses in Fiscal Year 1997 that concentrate on the areas discussed in recommendations 3-3 and 3-4 and which must be attended by all contracting and project officers.

In light of the emphasis of CICA in our training classes and the Procurement Integrity

Act in the annual ethics training requirement, we do not believe that such training is necessary at
this time.

3-6) Issue an EPA Order directing senior management that all space requirements on future projects must be coordinated through the Facilities Management and Services Division (FMSD).

We currently have an Agency policy which requires that all space requirements be coordinated through FMSD. We will, however, issue a reminder of the requirement to Senior Resource Officials and their staffs. A copy of the policy can be found at Attachment 8.

3-7) Require OARM staff to comply with GSA regulations and EPA guidelines in regard to defining space requirements on future projects.

GSA regulations and EPA guidelines will be included in the memorandum noted in recommendation 3-6 above, and will be issued to OARM staff.

#### **CHAPTER 4**

#### **EPA EXCEEDED ITS AUTHORITY**

The OIG maintains that EPA officials exceeded their authority and consequently violated the Anti-Deficiency Act and CICA. The OIG also maintains that EPA "gave away" Government property and authorized work without the proper authority.

#### I. The Anti-Deficiency Act (ADA)

The OIG contends that EPA violated the ADA by ordering a lease that ran longer than an available appropriation. Specifically, the OIG contends that the lease between J&K Associates (J&K) and Unisys violated the ADA "by purporting to obligate the Government to reimburse its contractor \$3.7 million over four-and-one-half years before the funds for those years were appropriated." According to the OIG, the ADA violation stems from the fact that EPA officials "agreed" to the five year lease. On this basis, the OIG has recommended that EPA file a report of an ADA violation pursuant to 31 U.S.C. Section 1351.

We do not agree with the OIG's interpretation of the facts, or its recommendation. The EPA Comptroller, who is delegated the authority to make such determinations for the Agency, has concluded that there is no ADA violation. EPA's Office of General Counsel agrees.

In response to task order PWA 98-91, Unisys entered into a contract with J&K to lease a building for five (5) years. By letter dated November 13, 1991, Unisys sought EPA's consent to the subcontract as required by Federal Acquisition Regulation (FAR) clause 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), which is incorporated into and part of the prime contract between EPA and Unisys.

The CO consented to the subcontract on December 2, 1991. In consenting to the subcontract, the CO noted "The Government shall not be held liable, beyond 9/30/92, for this lease." The CO put her initials below the statement. The time period up to September 30, 1992 coincided with: 1) the availability of the appropriation provided in Public Law 101-507; 2) the availability of the funds obligated on the prime contract associated with the J&K subcontract, and; 3) the term of Contract No. 68-01-7437, which was in the last option period.

The CO did not "involve" the Government in a contract or obligation in advance of appropriations by consenting to the subcontract between J&K and Unisys. FAR subpart 44.203(a) expressly provides that "The contracting officer's consent to a subcontract... does not constitute a determination of the acceptability of the subcontract terms... unless the consent or approval specifies otherwise." In this regard, the CO clearly took an affirmative act to disavow any intention to establish a liability on the part of the Government in advance of the availability of appropriations or beyond the duration of Unisys' current contract.

In a legal opinion dated June 29, 1995, OGC determined that the lease between J&K and Unisys was a subcontract within the meaning of the FAR. EPA was not a party to the lease with J&K, nor are there any facts supporting the premise that privity of contract existed between an authorized EPA official and J&K. Unisys, not EPA, was bound by the terms of the lease.

Finally, Unisys reserved the right to assign the lease in the event that it ceased to be the EPA contractor for the establishment of the NESC. This agreement between J&K and Unisys did not legally obligate EPA to make lease payments to J&K for a five year period. In conjunction with the lease, EPA's contractual obligations to Unisys in connection with the Unisys subcontract with J&K would expire at the end of the Unisys contract.

Compliance with the ADA is determined when an obligation occurs. Although the role that EPA personnel played in Unisys' decision to lease space from J&K raise genuine issues relating to the appearance of subcontractor pre-selection, EPA did not violate the ADA by approving the subcontract between Unisys and J&K. Rather, the CO took an affirmative step to make it clear to Unisys that in approving the subcontract with J&K the Government was not incurring any financial obligations beyond September 30, 1992. An essential element of the ADA violation that the OIG alleges is a legally binding obligation of Federal funds in advance of appropriations. No such obligation has been identified. Accordingly, EPA did not violate the ADA by approving the subcontract between Unisys and J&K.

#### II. The Competition in Contracting Act (CICA)

The draft audit report states that the addition of the NESC project to an existing contract violated CICA because the work was not within the scope of the contract under which it was placed. The OIG states that the contract used to lease and renovate the NESC building was for computer operations and related services. The OIG concludes that the work should have been procured by use of a new competitively let contract.

It is our position that the work for the NESC was proper and within the scope of the Unisys contract. The contract statement of work was for computer operations and support services and provided:

The contractor shall establish, implement, manage, and maintain a facilities management service that is, on a continuing basis, responsive to the EPA data processing community. (Page 1)

The contractor... shall provide technical, administrative and managerial support in the planning, management, and implementation of major program initiatives as identified... that may include, but are not limited to planning and implementing a major support program responsive to EPA users located throughout the United States and planning and coordinating the installation of mainframes and/or large scale processors at the central and/or regional sites...

In support of such efforts, the contractor shall be required to develop detailed technical and strategic plans, develop operational, technical and managerial policies and procedures, and oversee and coordinate management, technical and operational activities to ensure successful and timely completion. (Paragraph 2.2.2)

We believe the project was within the scope of the contract statement of work as noted above. The lease and renovations of the building were appropriate and legally permissible because they were incidental to, and essential for the effective accomplishment of the properly authorized work assignment to provide super computer support services.

#### III. Alleged "Giveaway" of Government Property

We agree that generally, appropriated funds may not be used for improvements to private property unless specifically authorized by law. Government funded improvements to private property, however, have been deemed legally permissible in many cases. The Comptroller General has set forth guidelines for analyzing the circumstances under which an expenditure for improvements to private property is appropriate.<sup>2</sup> According to these guidelines, the appropriate time to definitively conduct such analysis is at the conclusion of the contract.<sup>3</sup>

The draft audit report makes no effort to compare the guidelines established under these decisions with the facts of the present case. Upon careful analysis, it may be determined that the improvements to the leased facility were appropriate and legally permissible because (i) the improvements were incidental to and essential for the effective accomplishment of the authorized purpose of the appropriation; (ii) at the time, expenditures were considered reasonable in amount; (iii) improvements were used for the principal benefit of the Government; and (iv) at the time the expenditures were made, to the best of the CO's knowledge, the interests of the Government were fully protected (both the lease and the contract require that the contractor return Government furnished property to EPA).

We will undertake a thorough analysis of the "improvements," in light of the tests of the applicable Comptroller General decisions at the end of the prime contract, now with Martin Marietta Technical Services, to determine whether they are consistent with public policy.

<sup>&</sup>lt;sup>2</sup>Department of Health, Education, and Welfare, 46 Comp. Gen. 25 (1966). See e.g., Home and Automobile Security Systems For U.S. Customs Service Personnel (1993) Lexis 867; The Committee on Environment and Public Works, 65 Comp. Gen. 722 (1986); B-187482 (1977), Lexis 2907.

<sup>&</sup>lt;sup>3</sup>See Department of Health, Education, and Welfare, 46 Comp. Gen. 25 (1966).

#### IV. Grand Opening Ceremony

The OIG alleges that EPA officials exceeded their authority by directing and accepting the costs of a grand opening ceremony for the NESC. The report notes that unallowable charges of \$23,540 were identified for a consultant, tents, tables, and chairs, and that evidence indicates additional costs were incurred for food, plaques, and catering staff.

The OIG further asserts that EPA officials, including the CO, exceeded their authority by accepting the NESC opening ceremony costs as allowable. The OIG bases its conclusion on copies of Unisys' invoices provided to the OIG by Unisys. We believe that prior to obtaining the results of an appropriate financial audit, such a conclusion is premature. The vouchers submitted to EPA by Unisys and consequently paid in accordance with the standard procedures at that time, lacked the appropriate detail to conclude that EPA accepted unallowable costs. The vouchers fail to provide itemized lists of:

- 1. costs by PWA to specify the work that is being invoiced; and
- 2. work by subcontractor, to specify the work being invoiced.

Lacking such information, it is impossible to know, from reviewing the invoices, exactly what was included in the costs claimed by the prime contractor.

In addition, a prime contractor cannot invoice costs until they have been paid. The lag time involved with the process of the prime contractor receiving and paying subcontractors' invoices and then invoicing the Government, may result in costs being invoiced by Unisys in a month different from that in which the cost was incurred. In light of the above, it appears that the OIG's conclusions are premature.

The OIG also believes that by consenting to the subcontract, the CO exceeded her authority and unallowable costs were accepted. FAR subpart 44.203, [Subcontract] Consent Limitations, notes:

"[T]he CO's consent to a subcontract . . . does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs. . "

The OIG concludes that EPA paid for food, specifically a barbecue lunch, at the ceremony based on a statement made by a subcontractor. There is no documentary evidence, however, to indicate that EPA paid for a barbecue lunch. In fact, it appears that the Bay Area Chamber of Commerce paid for the lunch. Several EPA employees indicated their recollection that the Bay City Chamber of Commerce helped sponsor the event and sold tickets to the barbecue lunch. A copy of the invoice and the check from the Bay Area Chamber of Commerce to "Billy Bones B.B.Q." for the EPA dedication can be found at Attachment 9.

In summary, the OIG's 's conclusions about the allowability of the various NESC opening

ceremony costs are premature. The issues the OIG has raised about these costs can be resolved after the closeout financial audit of the Unisys contract is completed.

#### V. Unauthorized Work

Finally, the OIG believes EPA personnel exceeded their authority by directing the contractor to perform work without the CO's prior approval. We agree that it appears that EPA personnel may have provided more than technical direction to the contractor. Lacking final cost audits, however, we cannot make such a determination at this point in time. Once we receive the final cost audits, we will determine whether ratification actions are appropriate and necessary.

#### RECOMMENDATIONS

The draft report recommends the Deputy Administrator:

4-1) Coordinate with EPA's Office of the Comptroller in order to fulfill the reporting requirements for a violation of the Anti-Deficiency Act. The Administrator must report all relevant facts and a statement of action taken to the President and Congress through the Director, Office of Management and Budget.

EPA did not violate the ADA, since it is not a party to, or bound by, the lease for the Kahn building. The subcontract between J&K and Unisys did not serve to legally obligate EPA. In consenting to the subcontract, the CO specifically noted that the Government would not be held liable beyond the date of the expiration of the contract.

4-2) Review whether any employee conduct violations occurred and whether disciplinary action is warranted under EPA Employee Responsibility and Conduct Regulations and related policies and procedures.

As noted earlier, the OIG has not, at this time, made available for Agency review certain Office of Audit work product materials. The OIG has advised us (1) that our access to such materials would not advance resolution of any audit report findings, and (2) that the materials at issue are potentially only germane to a determination of whether, and to what extent, personnel actions might be appropriate.

It is our understanding that, after all audit report issues other than this one are resolved, the OIG will make available to us its work product materials relevant to the personnel issue. Once the OIG has released such information, OARM will review it and take appropriate personnel actions as warranted.

The draft report recommends the Deputy Administrator require the Acting Assistant Administrator for OARM to:

4-3) Review all current subcontracts to identify any other violations of the Anti-Deficiency Act.

A review of EPA subcontracts to ensure compliance with the ADA is not necessary. These instruments do not legally obligate Federal funds because there is no privity of contract between subcontractors and the Agency.

In addition, all of our cost reimbursement clauses include FAR clauses 52.232-22 and 52.232-20, Limitation of Funds and Limitation of Costs, respectively which may provide further protection against ADA violations. The language in these clauses makes it quite clear that the Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount obligated by the Government on the contract. This would include work done by a subcontractor, as well as that done by the prime contractor. The prime contractor is responsible for managing its subcontractors in this context. Also, as discussed, FAR Part 44 expressly states that giving consent to a subcontract in no way constitutes approval of any terms and conditions of the subcontract, because there is no privity between the Government and the subcontractor.

4-4) Provide personnel with contract administration responsibilities training on the Anti-Deficiency Act and appropriate limits for subcontract periods. This should be incorporated into the training discussed in recommendation 3-5.

We agree that training regarding the ADA will be beneficial. OAM will, in coordination with the Office of the Comptroller, take advantage of special training opportunities (such as the annual EPA procurement conference) to conduct training for contracting and project officers regarding the application of the ADA to EPA contracts. Training will be accomplished in FY 1997. As noted above, the length of EPA subcontracts does not necessarily implicate the ADA.

4-5) Develop and implement policies and procedures to ensure EPA does not allow a contractor to subcontract beyond the available appropriation or the end of the contract.

The decision to subcontract and who to subcontract with, is a business decision made by a prime contractor. EPA cannot legally require a prime contractor to limit the term of a subcontract, since the subcontract may be in fulfillment of multiple requirements under several different contracts with several different agencies or firms. This recommendation conflicts with the well established legal principle that privity of contract limits an Agency's legal obligation to subcontractors.

4-6) Provide OARM official with contract administration responsibilities training on the use of Government funds for permanent improvements to private property.

OAM will take advantage of special training opportunities to offer training regarding

using Government funds for permanent improvements to private property. Training will be completed in FY 1997.

4-7) Reemphasize to project officers and managers the extent and limits of their contract administration responsibilities, stressing that they may not direct additional work without explicit authorization.

With the award of each new contract, the project officer receives a letter reiterating his/her duties, responsibilities, and authorities. We will revise this document to specify the scope and limitations of authority of the project officer.

4-8) Define the project officer's authority and responsibility in each new EPA contract award.

We will look into revising the EPA Technical Direction clause to identify the scope and limitations of the project officer's authority. We will also consider providing copies of the letter referred to in recommendation 4-7 above to contractors.

#### **CHAPTER 5**

#### **EPA'S SUBCONTRACT ADMINISTRATION VIOLATED LAW**

The OIG believes that the Agency's administration of the NESC subcontract violated the FAR, insofar as there are alleged problems with the subcontract type and competition, a failure to enforce the provisions of the Truth in Negotiations Act (TINA), and a lack of a positive responsibility determination.

In addition, the OIG correctly noted that Government equipment that had been furnished to the contractor was not recorded on property records. This situation has been remedied.

#### I. Subcontract Type

According to the OIG, the subcontract contained a prohibited cost-plus-percentage-of-cost provision which stipulated that the lease price would be adjusted by cost plus 82.5 percent for material modifications to the original renovation specifications.

The lease agreement was a fixed-rate arrangement for space. The lack of habitable space for a supercomputer necessitated that the facility be renovated. The 82.5 percent "add-on" clause in the agreement provided for changes outside of the building specifications. It is not atypical that a fixed-price contract is subject to adjustments based upon changes in the Government's technical requirements. Typically these changes are implemented through the changes clause. It should be noted that the 82.5 percent add-on clause included in the lease applied to decreases as well as increases resulting from change orders.

#### **II. Subcontract Competition**

The OIG report states that because only one company responded to Unisys' advertisement soliciting offers for space, the resulting selection of J&K Associates was a sole-source, non-competitive procurement. The OIG's conclusion misapplies the definition of a sole-source acquisition found in FAR subpart 6.003, which is as follows:

".. a contract for the purchase of supplies or services that is entered into.. by an Agency after soliciting and negotiating with only one source."

In the subject case, more than one source was solicited. In fact, an advertisement was placed in the "Bay City Times" soliciting offers for space to house EPA's supercomputer; the fact that only one offeror responded does not support the conclusion that it was a sole source procurement.

#### III. Truth in Negotiations Act (TINA)

The OIG asserts that the CO failed to enforce TINA by not obtaining certified cost or pricing data from Unisys regarding its proposed subcontract. The record, however, indicates that the CO made a good faith determination that the subcontract satisfied the "market price" exemption authorized by TINA. The CO's determination to apply an exemption of TINA does not, in and of itself, establish a failure to enforce the provisions of the Act.

TINA requires that Government contractors and their subcontractors provide cost or pricing data to enable the Government to perform cost or price analysis and negotiate fair and reasonable prices. TINA also requires a certification that, to the best of the contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted are accurate, complete and current.

FAR subpart 15.804-3(a)(2)(1991) addresses the circumstances under which cost or pricing data are required and reiterates the exemptions to TINA. It states that:

"[T]he CO shall not require submission or certification of cost or pricing data when the CO determines that prices are . . . (2) based on established catalog or market prices of commercial items sold in substantial quantities to the general public [.]" (Emphasis added.)

"Established catalog or market price" is subsequently defined at FAR subpart 15.804-3(c)(2)(1991) as:

".. a current price that (a) is established in the course of ordinary and usual trade between buyers and sellers free to bargain and (b) can be substantiated by data from sources independent of the manufacturer or vendor.

The price of real estate is definitely the result of "ordinary and usual trade between buyers and sellers free to bargain." Moreover, real estate market values can easily be substantiated by sources independent of the manufacturer or vendor. A price comparison of similar types of real estate is easily accomplished. In the subject case, Unisys provided a market price analysis which contained data regarding a similar facility built-out to house a supercomputer. Unisys also provided additional data with which an adjustment for regional differences between the two facilities could be made. Upon receipt and review of this information, the CO made the arguably reasonable determination that the information submitted by Unisys fit within the "established catalog or market price" exemption of TINA.

The fact that Unisys' analysis may have been flawed does not necessarily mean that the CO's determination that a TINA exemption applied was tantamount to a failure to enforce the Act. In fact, the CO's analysis and subsequent determination indicate that she was well aware of TINA's requirements and the FAR's guidance regarding the Act's applicability.

#### IV. Administration of Government Property

As noted by the OIG, irregularities regarding the administration of Government property have been corrected.

EPA has recently entered into an interagency agreement with the Defense Contract Management Command (DCMC) to perform property administration duties, reducing the Government's vulnerabilities by enforcing FAR compliance and increasing contractors' accountability.

#### RECOMMENDATIONS

The draft audit report recommends the Deputy Administrator require the Acting Assistant Administrator for OARM to:

5-1) Provide Contracting Officers with training on subcontract consent procedures.

OAM is currently in the process of revising its subcontract consent procedures in the form of a new chapter to the Contracts Management Manual (CMM). This chapter will be issued for Agency Directives Review (Green Border) during the first quarter of fiscal year 1997.

As an interim measure, a draft Procurement Policy Notice was issued and commented on by the OIG. This point will also be issued in the first quarter of fiscal year 1997.

5-2) Require Contracting Officers to read proposed subcontracts before granting consent.

The assumption that inadequate performance on the part of any one contracting officer is assignable to all employees is without support. Although we believe that all EPA COs are aware of and consistently comply with the requirement that they read proposed subcontracts before granting consent, this will be part of the policy noted above.

5-3) Require that Agency personnel maintain official property records for NESC equipment furnished to the contractor in accordance with the contract.

In accordance with the FAR, the official property records are maintained by the contractor. The accuracy of these records is audited, pursuant to an interagency agreement with the Defense Contract Management Command. To require Agency personnel to also maintain records would be duplicative.

5-4 Require periodic inventories of equipment furnished to the contractor be conducted at the NESC by Agency personnel.

In accordance with the FAR and their individual contracts, EPA contractors are required to inventory and submit an annual report of Government property in their possession. The report must be accurate as of September 30, and submitted to the CO no later than October 31 each year.

#### **CHAPTER 6**

#### **EPA FAILED TO MAINTAIN DOCUMENTATION**

The OIG maintains that EPA officials failed to create and maintain documentation of significant decisions and activities, and also alleges that documents were destroyed.

EPA acknowledges that records were not properly created and maintained. It appears that a significant amount of contract related "business" was conducted orally or via the electronic mail system without a permanent written record being created.

In regard to the destruction of records, because the OIG has not indicated with specificity what documents were destroyed, or allowed OARM access to individuals' statements provided to the OIG regarding this issue, at this time we are unaware of any instance of purposeful destruction of documents to impede the OIG's review. We will take action to ensure that personnel do not inappropriately destroy records and that the FAR procedures for disposal of contracting records are followed.

It is also important to note that the contract files have been subjected to any number of reviews and audits by a variety of parties. In addition to this, and related audits regarding the NESC project which have been ongoing for an extended period of time, the General Accounting Office, OAM's Quality Assurance Branch, and other individuals have reviewed the files for various reasons. It is likely that as a result of such extensive handling of the documents that some have been misplaced, lost or incorrectly filed. In this regard, a previous CO and contracts specialist has stated with certainty, that documents that were once in the file prior to these reviews, can no longer be located.

Since the time of the Unisys contract, records disposition schedules have been updated to clearly state that records held by the CO, PO, and delivery order project officer/work assignment manager are all necessary to document contract management. The new schedules also contain information about the types of records that should be included in the file. In addition, Chapter 10 of the Information Resources Management Manual has been recently revised to clarify the degree to which staff must record their activities and decision making processes.

OIRM has conducted a good deal of training, averaging 25-30 sessions a year, including training for most Office of Research and Development laboratories, EPA offices in Cincinnati, and all but one EPA regional office, Headquarters offices, etc. Records liaisons in the program offices have provided additional training. OIRM has also worked with the OIG to develop Awareness Bulletin 95-1, "Management and Disposition of Federal Records," distributed to staff, and also distributed to staff OGC memoranda on e-mail and other record keeping issues. Since 1992, we have sent notices to senior managers about their records management responsibilities and distributed copies of NARA's "Personal Papers of Executive Branch Officials." OIRM has also provided raining opportunities for senior managers on various occasions and advertised the

availability of training and guidance through II-Bits, a newsletter published by OIRM's Enterprise Technology Services Division. Currently, records management policy and guidance is available through EPA's Internet web site.

#### RECOMMENDATIONS

The draft audit report recommends the Deputy Administrator:

- 6-1) Take appropriate action against officials who violated the Federal Records
  Act and the Records Disposal Act by concealing, removing, or destroying any
  records or documents.
- 6-2) Hold Agency personnel accountable for the maintenance of all documents related to decisions and input into the decision making process.

The OIG has not, at this time, made available for Agency review certain Office of Audit work product materials. The OIG has advised us (1) that our access to such materials would not advance resolution of any audit report findings, and (2) that the materials at issue are potentially only germane to a determination of whether, and to what extent, personnel actions might be appropriate.

It is our understanding that, after all other audit issues are resolved, the OIG will make available to us its work product materials relevant to the personnel issue. Once the OIG has released such information, OARM will review it and take appropriate personnel actions as warranted.

The draft audit report recommends the Deputy Administrator require the Acting Assistant Administrator for OARM to:

6-3) Provide training to Senior Level Mangers, Contracting Officers, Project Officers, and other staff with contracting duties on the Federal Records Act, the Record Disposal Act, implementing regulations, and EPA policy affecting the retention of records.

We agree that training regarding the Federal Records Act and related requirements will be valuable. We will develop record keeping requirements for documenting important decisions and conduct training to all levels of employees.

6-4) Initiate a review of other EPA contracts to identify documentation problems and take corrective action.

Each year, the OAM plans its Acquisition Management Review (AMR) program. Oversight reviews of EPA regional offices, program offices, and contracting activities are

conducted as part of OAM's management control procedures. Management, operational, and procedural issues are evaluated, including staffing, workload, and compliance with Federal and Agency acquisition regulations, policies and procedures.

As a consequence of the AMR, OAM issues a written report to the Senior Resource Official (SRO) with findings, observations, and recommendations. The SRO is required to respond with an action plan with milestones. Corrective action plans are validated by OAM upon re-review of the relevant office.

Beginning with our FY 97 AMR program, OAM will review, by program office, a representative sampling of contracts for potential documentation problems.

#### UNITED STATES ENVIRONMENTAL PROTECTION

#### OFFICE OF THE INSPECTOR GENERAL MID-ATLANTIC DIVISION

#### **841 Chestnut Building** Philadelphia, Pennsylvania 19107-4431 (215) 597-0497

(703) 308-8242

February 22, 1996

CONFIDENTIAL INFORMATION

MEMORANDUM

Request for Contracting Officer Assistance in Resolving SUBJECT:

an Access to Record Problem

\*\*Renneth G. Prather\*\*

FROM:

Audit Manager

Valerie Garcia TO:

Contracting Officer

We request your assistance in resolving an access to record problem we have encountered on Contract No. 68-01-7437. We have been pursuing the interview of one of the Unisys Corporation's (Unisys) employees, since this employee is very knowledgeable of the events resulting in the establishment of the National Environmental Supercomputing Center.

We have had several conversations with Unisys concerning this topic; however, we have been denied access to this employee by Unisys. We were informed by Unisys it will not compel one of its employees to be interviewed by our office. According to Unisys, the employee refuses to be interviewed by our office. Please see the attached letter from Unisys.

We understand a company has an obligation to make its employees available to be interviewed under FAR 52.215-2 (Audit and Records -- Negotiation). We also understand a company cannot force an employee to waive the rights afforded to it under the Fifth Amendment, but it could make talking to Government representatives a condition of one's employment. Therefore, we request you take appropriate action to resolve Unisys's violation of FAR 52.215-2.

Your prompt attention to this matter is greatly appreciated.

If you have any questions, please contact me or Julio Arias at telephone number (703) 308-8242 or (703) 308-8221.



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

MAR 1 | 1996

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

#### **MEMORANDUM**

SUBJECT: OIG Request for Contracting Officer Assistance

FROM:

Betty L. Bailey, Director

Office of Acquisition Management (3801F)

TO:

Kenneth G. Prather, Audit Manager

Mid-Atlantic Audit Division

This is in response to your memo of February 22, 1996 to Valerie Garcia, and your memo of March 1, 1996 to Carol Fagnani. For your information, Ms. Garcia no longer works for OAM.

Specifically, you request their assistance in gaining access to a contractor employees regarding the establishment of the National Environmental Supercomputing Center. You cite Federal Acquisition Regulation (FAR) clause 52.215-2 (Audit and Records-Negotiation), as the means by which you believe a contracting officer can compel access to a contractor's employees.

We disagree with your contention that FAR clause 52.215-2 requires a contractor to make its employees available to Government representatives to be interviewed. The clause gives the contracting officer the right to examine and audit books, records, documents, and accounting procedures and practices related to establishing costs relative to contract performance. While the clause may give the Agency the right to seek explanation of such documents, the clause does not give the agency guaranteed access to specific contractor employees. Any conversations are incidental to the examination of records.

We are happy, however, to help you in any way possible to help you get the required information. If we can be of further assistance, please call Susan Kantrowitz at 202/260-8176.

cc: C. Cowgill

K. Pakula

J. Gherardini

S. Kantrowitz

C. Faqnani



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

APR - 2 1996

OFFICE OF THE INSPECTOR GENERAL

#### **MEMORANDUM**

SUBJECT: Response to Request for Assistance and Access to Records Issues

FROM:

Elissa R. Karpf

Deputy Assistant Inspector General for Acquisition and Assistance Audits

TO:

Betty L. Bailey, Director

Office of Acquisition Management

We request clarification of statements in your memorandum of March 11, 1996, provided in response to Kenneth G. Prather's request for assistance in resolving access to records problems. Specifically, we request clarification of the statements, "We disagree with your contention that FAR clause 52.215-2 requires a contractor to make its employees available to Government representatives to be interviewed." and "While the clause may give the Agency the right to seek explanation of such documents, the clause does not give the agency guaranteed access to specific contractor employees. Any conversations are incidental to the examination of records."

Government contract administration officials have long held that interviewing specific employees is a Government right under FAR clause 52.215-2. For example, the Defense Contract Audit Agency's Contract Audit Manual section 1-504.1 b states, "In addition to access to specific cost records, access to records refers to the contractor personnel ... which affects and reflects the incurrence, control and allocation of costs to contracts." An interpretation of the clause that excludes the best source of explanation and gives the contractor the right to pick and choose what support to provide, would render the clause meaningless. Therefore, we believe there is a miscommunication between your office and mine.

Recycled/Recyclable Printed with Soy/Canola link on pat contains at least 50% recycled fibs Please explain your understanding of the distinction between areas where the contractor must provide specific employees to answer questions under the clause, as opposed to areas where the Government is precluded from specifying which employee must explain. Once you provide your understanding of the distinction, and we have had an opportunity to review it, we will contact you to arrange a meeting to discuss any further areas of potential disagreement.

Should you have any questions, please contact Gary R. Greening at (202) 260-6125 or Kenneth G. Prather at (703) 308-8242.

#### **MEMORANDUM**

SUBJECT: Response to Request for Assistance and Access to Records Issue

FROM: Betty L. Bailey, Director

Office of Acquisition Management (3801F)

TO: Elissa R. Karpf

Deputy Assistant Inspector general for Acquisition and Assistance Audits

This is in response to your memo of April 2, 1996 requesting clarification of statements in my March 11, 1996 memo to Kenneth G. Prather. Mr. Prather requested assistance in resolving access to records problems.

In his February 22, 1996 memo to Valerie Garcia, and march 1, 1996 memo to Carol Fagnani, Mr. Prather requested OAM's assistance in gaining access to contractor employees regarding the establishment of the National Environmental Supercomputing Center. Federal Acquisition Regulation (FAR) clause 52.215-2 (Audit and Records -- Negotiation) was cited as the means by which Mr. Prather believed a contracting officer could compel access to a contractor's employees.

In your April 2, 1996 letter addressing our March 11, 1996 response to Mr. Prather, you further cite the Defense Contract Audit Agency's (DCAA) Contract Audit Manual section 1-504.1(b). Please note that we are not bound by DCAA's audit manual. Even if OAM were bound by DCAA's policies and procedures, we disagree with your interpretation that the clause gives an agency access to specific contractor employees. We believe that there must be a nexus between the documentation requested and the contractor's employee. Even so, officials at DCAA concede that even when the request for a specific individual is made, contractors are not required to provide the specific individual, as long as they a source of explanation to the requester.

Again, we are happy to help you in any way possible to get the information you require. If we can be of further assistance, please call Susan Kantrowitz at 202/260-8176.



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

SEP 2:0 1996

MANAGEMENT

Mike Actionan
Vice President/Group Controller
Unity's Corporation
\$008 Westpack Drive
McLean, Virginia 22102

Re: Draft Audit Report of Contract No. 68-01-7437-Availability of Unisys Employee for Interview

Dear Mr. Ackerman

The Environmental Protection Agency's (EPA) Office of Inspector General (OfG) recently issued a draft sudit report on EPA's establishment of the National Environmental Supercommenting Center (NESC) facility in Bay City, Michigan. The Office of Acquisition Number of the California in the process of reviewing and commenting on the draft report. The purpose of this letter is to request your assistance in clarifying the facts surrounding the stabilishment of the NESC.

The draft such report notes that the OIG was unable to interview an Unisys employer, who: (a) managed the solicitation and negotiation of the subcontract to lease the NESC facility; and (b) participated in planning the renovation of the facility. The draft report also states that the OIG could not gain a complete understanding of the solicitation and regonation of the subcontract and the renovation of the facility by other stading procedures.

In creder to develop an accurate record of the facts in this case, the auditors believe it is exitical to obtain information from a section of the facts in this regard, we understand that in February 1996, Unity's informed the OIG that it cannot compel its employees to submit to government asserviews.

We fully appreciate the considerations that may have led to that decision. However, with its issuance of the draft report, the Agency believes that it will be difficult to accurate the facts surrounding this establishment of the NESC without appearance participation. The final audit report, as well as any subsequent cost audits, may allow more accurate and complete accounts of events surrounding the subject procurement if a subject procurement is a subject procurement in a subject procuremen

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While you are in no way compelled by the terms of your contract with the Agency, we respectfully requestlyour help in arranging an interview with

Thank you is advance for your assistance in this matter. So that we can meet our internal deadlines, we would appreciate a response by October 3. If you have any questions, picuse postact me at (202) 260-5020.

Sincerely

Betty L. Bailey Director

ec: John C. Martin, Inspector General
Jounthus Z. Campon, General Counsel

RESOURCES MANAGEMENT DIRECTIVES
PLANNING AND SUDGETING
PHASE ONE: FORMULATION OF EPA'S BUDGET

#### RMIS ORJECT CLASS CODES AND TITLES

NUMBER	TITLE	ABBREV.
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44	Rent Comm & Util	RENT
45	Print & Reprod	PRINT
46	Other Contr Serv	<b>QCSERV</b>
47	Supplies & Matis	SUPPL
48	Equipment	EQUIP
48 49 50	Land & Structure	LAND
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<b>-</b> ⊋€3	ADP Contracts	AOPCTR
54	ADP Timeshare	ADFTIM
	Extramural Dollars	
60	R & D Contracts	ROGRT
61	IAG Agreements	<b>LAG</b>
82	Prog Contracts	PGCTR
70	Research Grants	RGAT
71	Derno Grants	DGKT
72	Granto - State	PGGRT
73	Grants - Other	OGRT

Exhibit 2510-2-5

2510 6/4/87

#### ALLOWABLE OBJECT CLASSES AND PROGRAM ELEMENTS BY APPROPRIATION

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Appendix 2510-4-25

FAX NO. 2606881

P. 05 P.04

RESOURCES MANAGEMENT DIRECTIVES PLANNING AND BUDGETING PHASE THREE: BUDGET EXECUTION

2510 6/4/87

### ALLOWABLE OBJECT CLASSES AND PROGRAM ELEMENTS BY APPROPRIATION (Continued)

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# CROSSWALK OF RMIS OBJECT CLASSES TO EPA APPROPRIATIONS

APPROPRIATION: (A) SALARIES & EXPENSES 6850200(FY 1985)

CHARGEABLE CODES: FOR ALL PROGRAM ELEMENTS EXCEPT FOR THOSE PROGRAM ELEMENTS IN THE MANAGEMENT AND SUPPORT MEDIA; ALL REIMBURSABLE PROGRAM ELEMENTS.

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SUPPLIES & MATERIALS EQUIPMENT INSURANCE	(47) (48) (50)	25.80, 25.81, 25.82, 25.97, 25.98 26.00 - 26.99 31.00 - 31.99 42.01								
ADP CONTRACT SERVICES	(53)	25.13, 25.14, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.23, 25.27, 25.96								

FOR THOSE PROGRAM ELEMENTS IN THE MANAGEMENT AND SUPPORT MEDIA AND ALL REIMBURSABLE PROGRAM ELEMENTS - ALL RMIS & FMS CODES EXCEPT LAND AND STRUCTURES (RMIS-49; FMS-32.00-32.99) ARE ACCEPTABLE AGAINST THE SALARIES & EXPENSES APPROPRIATION. CHARGES TO THE LAND AND STRUCTURES OBJECT CLASS IN THIS APPROPRIATION REQUIRE PRIOR APPROVAL FROM THE OFFICE OF THE COMPTROLLER AND THE FACILITIES AND SUPPORT SERVICES DIVISION. CHARGES TO THIS OBJECT CLASS ARE APPROPRIATE IN THE BUILDINGS AND FACILITIES APPROPRIATION AND ONLY BY EXCEPTION IN THIS APPROPRIATION.

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SUMMARY OF CHANGES IN OBJECT CLASSIFICATION CODES DURING FISCAL YEAR 1991 INCLUDED IN THIS UPDATE

#### ADDED CODES

- 11.97 Interest Penalty Personnel Compensation. A late payment charge added to the amount of a bill relating to compensation for services rendered to the Government by experts and consultants or other non-Federal employees, as authorized by Public Law 97-177 (Prompt Payment Act), as amended by Public Law 100-496, when payment of a bill is made more than 30 days after the start of the payment period.
- 21.92 Local Travel (Superfund/Solid Waste)
- 32.04 Leasehold Improvements. The cost of improvements (including such improvements as carpeting, space partitions, soundproofing of ceilings or walls, and alterations) which have an estimated useful life longer than 1 year and are made to leased properties or to occupied properties owned by another Government agency.
- 41.64 Radiation Program Grants. Awards to states for the establishment and operation of programs to prevent or eliminate unreasonable risks associated with radioactive substances.

#### AMENDED CODES

- 25.17 Telecommunication Services and Contracts. ADP and telecommunication contracts to provide communication carrier services such as would be available from a microwave, circuit switching, or telephone company, and telecommunications support services including planning, design, installation, management and analysis.
- 26.04 ADP and Telecommunications Supplies. Examples of ADP supplies are printer paper and special forms, magnetic tapes and disks, ribbons and ink, punched cards, and in-house training. Examples of Telecommunications supplies are cable, fax paper, connectors, cords, tape, face plates, fuses, power supplies, adapters, card sets, and circuit packs.
- 31.03 Purchase of ADP and Telecommunications Related Equipment Valued at \$5,000 or More. Equipment includes central processors, memory, channels, peripheral devices, controllers, interactive and batch terminals, voice and integrated voice/data premise systems, electronic Key systems, PBX'S, and radio systems.

#### 23.00 RENT, COMMUNICATIONS AND UTILITIES

RENTS. Charges for possession and use of land, structures, or equipment (other than transportation equipment) owned by another person. It also includes periodic charges under purchase rental agreements for equipment prior to the time the title to the equipment is acquired. (Payments subsequent to the acquisition of title should be classified as equipment) It excludes payments under lease-purchase contracts for construction of buildings (included in major object class code 32).

COMMUNICATION SERVICES. Includes the transmission of messages from place to place, such as contractual charges for land telegraph service, telephone and teletype service; charges for postage (other than parcel post); contractual messenger service; and rental of post office boxes, postage meter machines, mailing machines, and teletype equipment. It also includes switchboard and service charges and telephone installation costs.

UTILITY SERVICES. Charges for heat, light, power, water, gas, electricity, and other utility services exclusive of transportation and communication service.

- 23.01 Land and Structures. Rental use of land and buildings owned by another except rentals for data processing facilities (object class code 23.09) and other rentals included in Standard Lever User Charges Assessed by GSA (object class code 23.10).
  - 23.02 ADP Software Packages. Lease or rental of commercially available software packages.

    Maintenance is included when it is part of the lease arrangement.
  - 23.03 ADP Computer Systems and Equipment. Lease/rental or user charges for all general purpose computer systems and equipment regardless of capacity and cost. Computer systems are defined to include CPU(s), memory, channels, and electronically connected devices such as printers, tape and disk controllers and drives. ADP equipment includes interactive and batch terminals, plotters, bursters, decollaters, performance monitors, and special furniture.
  - 23.04 Telecommunications Equipment. Lease/rental or user charges for all data phones and other equipment associated with ADP telecommunications networks.
  - 23.05 Word Processing Rentals. Charges for all leased word processing equipment, including software, and accessories furnished as part of rental contracts.
  - 23.06 Demurrage on Gas Cylinders
  - 23.07 Rental of Other Equipment. Rental of other equipment not included in any other object, e.g., postage meter, post office boxes, excluding communication

equipment.

- 23.08 Rental of Photocopy Equipment. Rental of photocopiers such as Xerox, thermafax, etc.
- 23.09 Data Processing Facilities. Lease/rental data processing facilities. Data processing facilities are defined to include computer rooms, tape libraries, off-site storage, office and training areas.
- 23.10 Standard Level User Charges. Charges for rental of space and related services assessed by the General Services Administration as Standard Level User Charges (SLUC).
- 23.11 Local Telephone Service. Rental of telephone and charges related to local service, e.g., switchboard charges, excluding installation charges.
- 23.13 Long Distance Service. Rental of leased lines or dedicated lines for long distance service including toll calls.
- 23.14 FTS Service. Rental of FTS lines and services from GSA.
- 23.15 Telephone Installations. Charges for installing telephones.
- 23.20 Utility Services. Charges for heat, light, power, water, gas, electricity and other utility services. (Does not include the purchase of raw fuel used for heating, etc., which is properly chargeable to object class code 26.08).
- 23.25 Penalty Mail. Payment made to the U.S. Postal Service for the cost of mailing normal Government correspondence, including U.S. Postal Service Express

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	25	24	23	22	. N	12	Ξ	OC LAND
_	OTHER CONTRACTURAL SERVICES	PRINTING & REPRODUCTION	RENT COMM & UTILITIES	TRANSPORTATION OF THINGS	TRAVEL & TRANS OF PERSONS	PERSONNEL BENEFITS	PERSONNEL COMPENSATION	OBJECT CLASS DESCRIPTION
	2513 2516 2517 2519 2519 2520	240 I 2402	2301 2303 2320 2320 2325	2209	2111 21113 21114 21116 21116 21117 21121 21221 21223 21224 21225 21227 21227	1210 1240 1241 1241	1135 1151 1165 1181 1182	OBJT CLAS
•	ADP CONTRACTS RED OR ENH SYS ADP USER OPER SUP MGMT CO TELECOM SERVICES TIMESHARING SERVICES INCID ADP OPER SUPP MAINTENANCE DATA PROC EQUIP	PRINTG & REPRO OF INFO MATE FEDERAL REGISTER PRINTING TOTAL OCMAJ	LAND & STRUCTURES ADP CMPUTER SYS & EQUIP UTILITY SERVICES PENALTY MAIL TOTAL OCMAJ	TRANP OF THGS(100 OR LESS) TOTAL OCMAJ	PER DIEM & SUBSISTENCE-ALL O COMMON CARRIER PRIVATELY OWNED VEHICLE COMMERCIAL RENTAL GSA CAR RENTAL INCIDENTAL COSTS ITE REL TRAVEL COM CARRIER SITE REL TRAVEL COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE TRAVEL LOCAL TRAVEL TOTAL OCMAJ	SOCIAL SEC-FICA.CIV PFT SOC SEC CONT.CIV NON-CLG EMPL RETIREMENT CON NON-CLG EMPL INSURANCE CONTR.NON-CLG EMPL	ST TME. NON CLG EMP.GW WW.YV OVERTIME PAY. (PFT) OTHER PERSONNEL COMP SPECIAL PERSONAL SVC PAYMENT INTERGOVRNMNTL PERSONHEL ACT INTERGOVRNMNTL TOTAL OCMAJ	OBJECT CLASS DESCRIPTION
	739,660.99 2,054,682.55 640.00 1,200.00 20,167.69 53,082.80	69, 296.00 216, 400.00 285, 696.00	1.351.00 206.91 231.86 2.487.00 4,276.77	426.73 426.73	219.476.68 160.021.28 14,968.60 28,412.20 14,710.78 27,716.05 5,984.08 558.00 127.92 187.61 268.50 728.50 728.50	6.28 546.43 466.75 12.95 1,032.41	3,590.40 183.24 551.42 65,000.00 58,208.08 127,533.14	TOTAL OBLIGATIONS
			2	•	*			
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ATTACHMENT O

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# ENVIRONMENTAL CTION AGENCY

SOF 2 ONLY BY PEAPR, OCMAJ, OCSUB

	CCAPR
TOANSBOUTATION DE THINGS	A PROGRAM, RESEARCH & OPER.
2212	OBJT
	APR A PROGRAM, RESEARCH & OPER.  TOTAL J OBJECT CLASS DESCRIPTION OBJT OBJECT CLASS DESCRIPTION OBLIGATIONS CLAS CLAS
156,687.07	TOTAL OBLIGATIONS

1		1 1 1 1		
OC A	OBJECT CLASS DESCRIPTION	CLAS	OBJECT CLASS DESCRIPTION	OBLIGATIONS
1		3 3 3		156,687.07
22	TRANSPORTATION OF THINGS	2213		239.02-
		2218		358, 434, '46
		2292		50,974,93
		2293	DROG-PROMPT PAY INT PENALTY	79.20
		1677	TOTAL OCMAJ	1,666,676.88
;	***** * ***** * **********************	2300	RENT COMM & UTILITIES	162,366.00-
0	MEXT COMM & CO	2301		9,092,238.82
		2302		1,169,200.12 2 ASB 101.97
		2304	٠	210,933.15
	-	2306		99,028.75
		2307		439,134.23
		2309		106, 234. 72
		y 2310		72,757,088.29
		2311		4.692.235.12
		2313		4,961,243.52
•	,	2315		113,703.91
		2320		4.596.580.69
	•	2327		217,308.15
	•	2397	PROG-PROMPT PAY INT PENALTY	2,022.67
		1985Z	TOTAL OCMAJ	117, 221, 324.01
3	PRINTING & DEPRODUCTION	2400	PRINTING & REPRODUCTION	14,631.32-
,,		2401		4.058,928.23
	4.	2402	DOOG BROWNT DAY INT DENAITY	54.75
		1667	TOTAL OCMAJ	5,483,018.91
Э Л	OTHÉR CONTRACTURAL SERVICES	2500	OTHER CONTRACTURAL SERVICES	629,333.96-
i		2513		2,492,739,19
		2514		27,037,937.84
		2517	•	3, 147, 570. 65
		2518		5.079.514.34
		2521		241,108.54
		2523		1.829,776.10
		2525	PROG-REPAIRS & IMPROVEMENTS	2,020,968.88
		1		

# FY 91 YEAR-END FILE (YREND-91) SOF 1 ONLY

	2500 OTHER CONTRACTURAL SERVICES	OTHER CONTRACTURAL SERVICES	25
DUCTION OF INFO MATE PRINTING ROPRIATION NG & REPRO TOTAL OCMAJ	2400 PRINTING & REPRODUCTION 2401 PRINTG & REPRO OF INFO MATE 2402 FEDERAL REGISTER PRINTING 2405 PRINTING R&D APPROPRIATION 2497 INT PENLTY, PRINTING & REPRO TOTAL OCMAJ	C PRINTING & REPRODUCTION	24
SERVICE RVICE: LATION IONS COMM&UTIL		4.	(
UIP UIP UIP PMENT EQUIPMNT	2300 RENT COMM & UTILITIES 2301 LAND & STRUCTURES 2302 ADP SOFTWARE PACKAGES 2303 ADP CMPUTER SYS & EQUIP 2304 TELECOMMUNICATION EQUIP 2306 DEMURRAGE ON GAS CYLINDERS 2307 RENTAL OF OTHER EQUIPMENT 2308 HENTAL OF PHOTOCOPY EQUIPMNT 2310 STANDARD LEVEL USER CHARGES	RENT COMM & UTILITIES	10
FIHINGS NICLE RENT O OR LESS) RIER SVCS S(OV\$100) PRO(OV5000) EFFECTS PROPERTY S OF THNGS TOTAL OCMAJ	TRANSPORTATION OF THINGS NON-PASSENGER VEHICLE RENT TRANP OF THGS(100 OR LESS) TRANP OF THGS(100 OR LESS) MESSENGER&OR COURIER SVCS TRAN&CARE OF THGS(0V\$100) TRAN OF THGS CAPPRO(0V5000) TRAN OF THGS CAPPRO(0V5000) TRAN OF THGS CAPPRO(THGS) TOTAL OCMAJ TOTAL OCMAJ	TRANSPORTATION OF THINGS	( 22
ITE REL TRVL	2115 COMMERCIAL RENTAL 2116 GSA CÁR RENTAL 2117 INCIDENTAL COSTS 2121 PER DIEM&SUBST SITE REL TRVL 2191 LOCAL TRAVEL TOTAL OCMAJ	TRAVEL & TRANS OF PERSONS	2
RIPTION	OBJT OBJECT CLASS DESCRIPTION	OBJECT CLASS DESCRIPTION	00 Z Z
SOF T ONLY	SO	PR F LUST TRUST FUND	. PEAPR

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N INSPECTOR GENERAL

0 ×	OBJECT CLASS DESCRIPTION	CLAS		TOTAL
21	TRAVEL & FRANS OF PERSONS	2124 2125 2127 2127 2191 2198	PRIV OWNED VEH SITE TRAVEL COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE TRVL LOCAL TRAVEL VEHICLE CHARGE BACK TOTAL OCMAJ	618.08 1,290.71 5,608.58 29,737.66 14,740.00 1,790.008.54
22	TRANSPORTATION OF THINGS	2200 2209 2212 2218	TRANSPORTATION OF THINGS TRAND OF THGS(100 OR LESS) TRANSCARE OF THGS(0V\$100) PCS TRANSFER OF EFFECTS TOTAL OCMAJ	300.00 300.69 175.00 52,586.36 53,362.05
23	RENT COMM & UTILITIES	2301 2303 2307 2308 2310 2311 2313 2314 2314 2314 2317 2318 2327 2398	LAND & STRUCTURES ADP CMPUTER SYS & EQUIPMENT RENTAL OF OTHER EQUIPMENT STANDARD LEVEL USER CHARGES LOCAL TELEPHONE SERVICE LONG DISTANCE SERVICE FTS SERVICE TELEPHONE INSTALLATION OTHER COMMUNICATIONS INT PENLTY, RENT, COMMAUTIL MAILCHARGEBACK TOTAL OCMAJ	2,350.90 414.00 195.51 10.183.96 2,221,500.00 80,480.42 4,083.76 20,705.00 238.16 740.00 15.44 100.00 2,349,007.17
24	PRINTING & REPRODUCTION	2401	PRINTG & REPRO OF INFO MATE	9,996.83 9,996.03
25	OHIER COMIRACTURAL SERVICES	25524 25527 25327 25327 25327 25337 25443	ADP USER OPER SUP MGMT CO TELECOM SERVICES  MAINTENANCE DATA PROC EQUIP EVALUATION & ANALYSIS SIDIES MAINT WORD PROC EQUIPMENT REPAIR&ALTER-BLDGS&GROUNDS MANAGEMENT&SUPPORT CONTRACTS OTHER AOP CONTR & SERVICES CONT FOR CONSULTANT SERVICES PROGRAM CONTRACTS PROGRAM CONTRACTS PROGRAM CONTRACTS SECURITY INVESTIGATIONS REGISTR FEES PO THRU IMPREST REGISTRATION AND OTHER FEES TRAINING ADP AN INFO SUPP IAGS	555, 250. 10 40, 500. 00 49, 108. 08 84, 845. 18 1, 341. 00 60, 718. 66 595. 736. 57 18. 350. 00 10. 992. 60 211, 850. 00 211, 850. 00 1, 872. 00 7, 098. 32

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.5	OC	OBJECT CLASS DESCRIPTION	OBJT CLAS	OBJECT CLASS DESCRIPTION	TOTAL OBLIGATIONS
	23	HENT COMM & UTILITIES	2301	LAND & STRUCTURES	2,757.00
			2310	STANDARD LEVEL USER CHARGES	1,331,500.00
			2311	LOCAL TELEPHONE SERVICE	66,671,48
			2313	LONG DISTANCE SERVICE	7.36
			2314	FTS SERVICE	40,093,97
			2300	WATE CHARGERACK	×, 000.00
				TOTAL OCMAJ	1,443,059.81
	24	PRINTING & REPRODUCTION	2401	PRINTG & REPRO OF INFO MATE	178,832.00
			2402	_	14,572.00
	i				
	Ĉ	OWNER CONTRACTORAL SERVICES	2516	ADD THE DEED SED WHAT TO	140,760.07
			2517	TRUNCOM SERVICES	14.131.72
		÷	2520	MAINTENANCE DATA PROC EQUIP	8, 133, 31
			2525	REPAIRSALTER-BLDGS&GROUNDS	84,485.60
			2526 2527	OTHER ADD CONTR & SERVICES	44.083.71
		•	2532		20,914.00
			2535	PROGRAM CONTRACTS	6,562,900,42
			2544	REGISTRATION AND OTHER FEES	6.437.00
			2545	TRAINING	29,942.52
		•	2550	CUSTODIAL SERVICES	1,707.96
			2571	RESEARCH INTER AGREEMENTS	155,000.00
			2582	MOVINGBOR LABOR SYCS	8.887.00
			2509	MISCELL, CONTRACTURAL SERVIC	336.00
			2597	INT PENLTY-OTH CONTRACT SVCS	11.68
				TOTAL OCMAJ	7,867,075.02
26	<b>o</b>	SUPPLIES & MATERIALS	2601	LABORATORY SUPPLIES	125,86
			2602	OFFICE & ADMIN, SUPPLIES	10,540.17
			2603	ADD SUBBLIES SUBSCRIPTIONS	63 004 18
			2605	MAINTENANCE SUPPLIES	6.700.00
			2607	ADP SOFTWARE PACKAGE	37,210.37
			2609	UNDISTR COST FR BANKCARD PUR	1,436.00
			2610	OTHER SUPPLIES & MATERIALS	10,769.16
			2697	STOREST PENLTY-SUPP & MATER	51 030 36 51 030 36
			0607	TOTAL OCMAJ	183,417.37
ia		FOLITOMENT	3101	<b>2</b> +	9.500.00
<u>ت</u>		EQUIPMENT	3101	SCI & TECH EQUIP OVER \$5000	9,500.00



ENVIRONMENTA FY 91 YEAR- FILE (YREND-91) TECTION AGENCY

C CLAS  RENT COMM & UTILITIES  2306 2309 2310 2311 2314 2315 2320 2320 2321 2321 2321 2321 2322 2322	PEAPR	ERFUND	TC80	OBJECT CLASS DESCRIPTION
RENT COMM & UTILITIES 2308 2307 2308 2309 2310 2311 2313 2314 2315 2327 2327 2329 2327 2329 2327 2329 2400 2401 2402 2407 2516 2517 2518 2520 2521 2521 2522 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523 2524 2523	30 7.W	OBJECT CLASS DESCRIPTION	OBJT	OBJECT
2308 2309 2319 2311 2311 2313 2314 2315 2326 2327 2329 2329 2327 2329 2329 2329 2400 2401 2402 2402 2402 2402 2403 2514 2518 2517 2518 2521 2521 2522 2523 2523 2533 2533 2533	23	RENT COMM & UTILITIES	2306 2307	DEMURHA
PRINTING & REPRODUCTION  PRINTING & REPRODUCTION  2313 2314 2315 2327 2329 2327 2329 2400 2400 2401 2402 2405 2407 2518 2517 2518 2517 2520 2521 2522 2523 2523 2523 2533 2533 2534 2533			2308	RENTAL
2311 2313 2314 2313 2314 2315 2320 2325 2327 2327 2327 2329 2327 2329 2400 2401 2402 2402 2402 2402 2402 2402			2310	STANDAR
PRINTING & REPRODUCTION 2400 2315 2326 2327 2327 2327 2329 2327 2329 2400 2401 2402 2402 2402 2402 2513 2514 2516 2517 2518 2517 2518 2520 2521 2521 2522 2523 2523 2533 2533 2533			2311	LOCAL TELEPHONE SERVICE
PRINTING & REPRODUCTION  2315 2326 2327 2327 2327 2327 2329 2400 2400 2401 2402 2405 2497  0THER CONTRACTURAL SERVICES 2513 2514 2516 2517 2518 2518 2519 2520 2521 2522 2523 2523 2533 2533 2533 2533			2313	LONG DISTANCE SERVICE
PRINTING & REPRODUCTION 2400 2400 2400 2400 2400 2400 2400 240			2314	FTS SER
PRINTING & REPRODUCTION 2400 2400 2400 2400 2400 2400 2400 240			2320	0111117
PRINTING & REPRODUCTION 2400 2400 2401 2405 2405 2407 2407 2500 2513 2514 2518 2518 2528 2528 2528 2528 2528 2528			2325	PENALTY
PRINTING & REPRODUCTION 2400 2400 2401 2402 2405 2497 2497 2513 2514 2518 2519 2520 2521 2523 2524 2523 2533 2533 2533 2533 2533			2327	OTHER
PRINTING & REPRODUCTION 2400 2401 2402 2405 2405 2405 2405 2405 2407 2407 2407 2407 2407 2513 2514 2516 2519 2520 2521 2523 2524 2523 2533 2536 2536 2537 2538 2540 2543			2390	MAILCH
PRINTING & REPRODUCTION 2400 2401 2402 2405 2405 2405 2405 2407 2407 2513 2514 2518 2519 2520 2521 2521 2523 2525 2525 2525 2525 2525				
UTHER CONTRACTORAL SERVICES 2500 2497  • CONTRACTORAL SERVICES 2500 2513 2514 2519 2520 2521 2521 2522 2523 2523 2523 2533 2533	24	PRINTING & REPRODUCTION	2400 2401	PRINT
0111ER CONTRACIURAL SERVICES 2500 2513 2514 2516 2518 2519 2519 2520 2521 2523 2524 2526 2525 2526 2527 2523 2523 2536 2537 2538 2530 2531			2402 2405	PRINTI
OTHER CONTRACIURAL SERVICES 2500 2513 2514 2516 2517 2519 2520 2521 2523 2524 2526 2527 2529 2533 2536 2536 2537 2538 2540 2543			2497	INT PE
•	25	OTHER CONTRACIONAL SERVICES	2500	OTHER
•		•	2513	ADP CON
•			2516	ADP USE
•			2517	TELECON
·			2519	INCID A
•			2520	MAIN TAT
		4	2523	ADP CON
•			2524	MAINT
•			2526	MANAGEN
			2527	OTHER /
			2529 2532	R P O P
			2533	CONT F
•			2535	PROGRA
٠			2537	HEALTH
			2538	SECURIT
			2540 2543	ADVERTI REGISTR

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PEAPR B ABATEMENT, CONTROL & COMPL

# FY 92 FILE (YREND-92) SOF 2 ONLY BY PEAPR, UCMAJ, OCSUB

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25	<b>24</b>	23	22		21	MAJ OC
OTHER CONTRACTURAL SERVICES	CHON	RENT COMM & UTILITIES	TRANSPORTATION OF THINGS	•	TRAVEL & THANS OF PERSONS	OBJECT CLASS DESCRIPTION
25 13 25 16 25 17 25 19 25 19 25 20 25 21 25 25 25 27 25 27 25 29 25 23 25 23 25 23 25 23 25 23 25 23 25 23 25 23 25 23 25 23	2401	2301 2302 2303 2311 2313	2206	2116 2117 2121 2121 2123 2124 2125 2125 2127 2127		OBJT CLAS
PROG-REPAIRS & IMPROVEMENTS  , PROG-R & D CONTRACTS	TOTAL OCMAJ	TOTAL OCMAJ	TOTAL OCMAJ	COMMERCIAL RENTAL GSA CAR RENTAL INCIDENTAL COSTS INCIDENTAL COSTS PER DIEM&SUBST SITE REL TRAVEL COM CARRIER SITE REL TRAVEL PRIV OWNED VEH SITE TRAVEL COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE TRVL LOCAL TRAVEL TOTAL OCMAJ	PER DIEM & SUBSISTENCE-ALL O COMMON CARRIER PRIVATELY OWNED VEHICLE	OBJECT CLASS DESCRIPTION
3,826,546,31 3,826,546,31 5,400,00 4,500,00 20,536,95 170,363,38 309,996,00 329,044,53 192,94 15,000,00 1,258,252,62 395,842,16 4,613,10 1,111,092,00 583,596,42 344,611,981,76 92,623,80 23,446,00	37,947,56 152,611.00 190,558.56	2,325.00 18,815.00 4,600.00 1,554.20 15,000.00 42,294.20	5,448.00 5,448.00	11,670.55 25,459.38 8,572.87 1,018.00 454.97 190.32 202.78 1,165.06 469,870.41	221,592.79 155,375.03 17,924.97 17,923.69	TOTAL
		0 5				
		23/0				
		ander AC+C				
		5				
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# ENVIRONMENTAL TON YCENCA

FY 92 FILE ( D-92)
SOF 2 ONLY BY PEAPR, OCMAJ, OCSUB

24 PRI	23 REN	~ 2 TRA	21 TRA	MAJ 0
PRINTING & REPRODUCTION .	RENT COMM & UTILITIES	TRANSPORTATION OF THINGS	TRAVEL & TRANS OF PERSONS	F LUST TRUST FUND OBJECT CLASS DESCRIPTION
2400 2401 2402 2405	2300 2301 2302 2302 2303 2304 2306 2307 2310 2311 2311 2311 2314 2314 2316 2316 2316 2316 2316 2317 2318	2200 2206 2209 2211 2212 2213 2213 2213 2218 2218 2292 2293	2123 2123 2124 2125 2127	OBJT CLAS
PRINTING & REPRODUCTION  TOTAL OCMAJ	RENT COMM & UTILITIES  PROG-PROMPT PAY INT PENALTY POTAL OCMAJ	TRANSPORTATION OF THIMGS PROG-PROMPT PAY INT PENALTY TOTAL OCMAJ	PER DIEMSSUBST SITE REL TRAVEL COM CARRIER SITE REL TRAVEL PRIV OWNED VEH SITE TRAVEL COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE TRVL LOCAL TRAVEL TOTAL OCMAJ	OBJECT CLASS DESCRIPTION
509.60 8.040.97 4.37 1.442.00 9.996.94	5,631.26 51,181.05 8,620.19 8,362.41 3,503.40 1,482.94 4,711.11 412.676.77 21.195.74 3,112.59 4,708.59 4,708.59 126.87 19.507.50 126.87 4.60 560,765.13	78.84 2,392.49 2,149.43 14.97 430.99 6.50 10,776.95 27.11 2.55 0.13	2,019.72 2,084.00 49.75 1,234.40 464.49 5,964.28 525,924.10	TOTAL

# FY 92 FILE (YREND-92) SOF 2 ONLY BY PEAPR, OCMAJ, OCSUB

	25	24	23	. 22	21	PEAPR OC
4.	OTHER CONTRACTURAL SERVICES	PRINTING & REPRODUCTION	RENT COMM & UTILITIES	TRANSPORTATION OF THINGS	TRAVEL & TRANS OF PERSONS	N INSPECTOR GENERAL OBJECT CLASS DESCRIPTION
2526 2526 2526 2526 2526 2533 2533 2533	2516 2518	2401 2402	2301 2307 2308 2310 2311 2313 2314 2314 2315 2317 2317	2209 2212 2218	2125 2127 2191 2192 2198	OBJT CLAS
PROG-REPAIRS & IMPROVEMENTS		TOTAL OCMAJ	TOTAL OCMAJ	TOTAL OCMAJ	COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE IRVL LOCAL TRAVEL SF SITE-SPECIFIC LOCAL IRVL VEHICLE CHARGE DACK TOTAL OCMAJ	OBJECT CLASS DESCRIPTION
66,700.00 101,418.52 216,001.24 78,579.09 11,000.00 5,700,289.64 4,082.00 106,900.00 2,044.65 9,977.75 253,102.63 752.00 3,405,406.00 38,622.44 1,500.00	414,330.00 618.00 50,417.84	12,083.95 625.00 12,708.95	1,039.40 2,519.50 16,176.35 2,550.550.00 62,295.41, 26,941.19 20,854.00 1,600.91 74,361.38 1,015.00 2,727,353.22	943.70 219.50 73,989.05 75,152.25	404.17 2,475.07 34,426.03 16.50 29,578.42 1,775,090.09	TOTAL OBLIGATIONS



# ENVIRONMENTAL!

FY 92 FILE (YREND-92)
SOF 2 ONLY BY PEAPR, OCMAJ, OCSUB

PEAPR MAJ OC	OBJECT CLASS DESCRIPTION	OBJT	
23	RENT COMM & UTILITIES	2301 2304 2310 2311 2313 2314	
2 (	PRINTING & REPRODUCTION	2401	
. 25	OTHER CONTRACTURAL SERVICES	2513 2516 2516 2517 2520 2525 2525 2527 2535	PROG-REPAIRS
(	•	2544 2544 2545 2574 2574 2502 2502 2509 2599	PROG-FAC MNT&OPER EXP PROG-PROMPT PAY INT PENALTY
26	SUPPLIES & MATERIALS	2602 2603 2604 2607 2610 2611 2688	•
<u> </u>	EQUIPMENT	3101 3102 3103	

# FY 92 FILE (YREND-92) SOF 2 ONLY BY PEAPR, OCMAJ, OCSUB

·	25	. 2	. 23	PEAPR MAJ OC
•	OTHER CONTRACTURAL SERVICES	PRINTING & REPRODUCTION	RENT COMM & UTILITIES	OBJECT CLASS DESCRIPTION
25 18 25 19 25 20 25 21 25 23 25 24 25 26 25 26 25 27 25 29 25 20 25 20 20 20 20 20 20 20 20 20 20 20 20 20 2	2500 2513 2514 2516 2517	2400 2401 2402 2402 2405 2405	2304 2306 2306 2309 2309 2311 2313 2314 2314 2315 2325 2325 2327 2327 2327 2397	CLAS
PROG-REPAIRS & IMPROVEMENTS PROG-R & D, CONTRACTS	OTHER CONTRACTURAL SERVICES	PRINTING & REPRODUCTION  PROG-PROMPT PAY INT PENALTY TOTAL OCMAJ	PROG-PROMPT PAY INT PENALTY	OBJECT CLASS DESCRIPTION
396, 972, 38 18, 00 18, 00 18, 03 88, 182, 91 254, 910, 50 14, 198, 96 269, 495, 90 11, 491, 380, 58 2, 542, 943, 53 20, 863, 558, 27 2663, 558, 27 2669, 637, 609, 89 350, 202, 27 41, 104, 40 112, 170, 09 45, 117, 34	606,589.32 3,590,156.95 19,250.00 20,943,579.78 330,319.39	14, 121, 72 653, 679, 43 62, 887, 40 146, 160,00 1,75 876, 850, 30	74, 403, 47 14, 347, 91 371, 389, 50 256, 140, 45 1, 783, 405, 75 2,032, 912, 35 589, 769, 31 1, 422, 053, 66 60, 857, 02 1, 308, 484, 77 809, 182, 20 148, 370, 04 138, 22 1, 732, 97 27, 106, 279, 87	TOTAL

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### ATTACHMENT 7

# ADDITIONAL DISCUSSION FROM CHAPTER 2: ALLEGED CIRCUMVENTION OF GSA PROPER USE OF APPROPRIATIONS

The documents provided by the OIG show RMIS object class codes and titles. Code 63 specifies "ADP Contracts." Other OIG documents indicate that this code did not appear as an allowable object class under the AC&C appropriation in 1987, but did appear under the Salaries and Expense appropriation. Therefore, the OIG concludes that EPA was prohibited from using AC&C funds for the Bay City project via an ADP contract. Page 5 of the reference has been provided to show more clearly that under the S&E appropriation, the "ADP Contract Services" object class 63 was linked to numerous Financial Management System (FMS) sub-object classes. including 25.13, 26.16, 25.19, and 25.20.

During FY 1989, EPA aggregated eighteen of the existing budget classes into six for the purpose of funds control and budgeting, and to accommodate the IFMS implementation. By memo dated December 2, 1988, (Attachment 10), EPA's Comptroller notified OMB of the change and explained on page 2 (Enclosure A of Attachment 10) that, similar to OMB's Circular A-11 Object Classification structure, the change would classify all contracts and interagency Agreements as object class 25.0. Enclosure B to that memo shows that the old code 63 was merged into the new code 25. An allowance inquiry table for the NESC contract, Attachment 11, shows the Bay City ADP FY 1991 funds under the 25 budget object class.

In a January 11, 1991 memo from EPA's Budget Director concerning FY 1991 Advice of Allowance Letter, Attachment 12, on page 4, ADP Contracts is shown as being in the 25 object class code for Budget and the 25.00 code for Finance. Finally, a FY 1991 object class description for AC&C, Attachment 13, shows the major object class 25, "Other Contractural [sic] Services." It also has many of the same sub-object classes shown under the 63 code for the S&E appropriation mentioned above.

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# APR 2 1-1993

# MEMORANDUM

SUBJECT: EPA Real Property Acquisition and Management Authority

FROM: Rich Lemley, Director Rich Lemley,

Facilities Management and Services Division

To: Addressees (See attached listing)

We have been receiving numerous questions concerning the use of trailers or other temporary buildings to meet rapidly increasing housing needs. There are several issues involved.

EPA does not have generic statutory authority to acquire real property; i.e., we cannot acquire, build or increase our space inventory with general purpose/office space, or, in many cases, special purpose space. This includes the purchase or lease of trailers or modular buildings. It makes no difference whether the building or trailer is intended to be leased or purchased, temporarily installed, or carried as personal property. These actions are all outside of our authority except under limited circumstances. Currently, our authority to acquire or construct special purpose space is limited to program functions authorized under the Clean Air Act, Federal Water Pollution Control Act and Comprehensive Environmental Response, Compensation and Liability Act (limited to specific Superfund sites necessary for removal or remedial actions).

In addition to the required statutory authorities, certain design criteria must also be met. This includes such things as conformance with the facility's master plan, compliance with prevailing safety guidelines for utility connections, and a determination as to whether or not the unit meets fire and safety codes.

In view of the foregoing concerns, I am issuing the following guidance. Trailers, temporary buildings, modular construction, etc. may only be acquired when certification can be provided that the unit is needed to meet programmatic requirements authorized under the Clean Air Act, Federal Water Pollution Control Act and Comprehensive Environmental Response, Compensation and Liability Act. Furthermore, the units may only be used as special purpose space. Funding must be consistent with EPA guidelines. Finally, the units must be approved by FMSD. All other prerequisite approval within appropriate channels remains the same.

Further, the Real Estate and Space Management Branch is not involved in the approval process in the event that the unit is to be acquired by a contractor. You must have the approval of the contracting officer that this is allowable under the terms and conditions of the contract and certification from the finance officer that funds can be expended for this purpose. Upon request, RESMB will supply a license which must be completed between the EPA facility manager/director and the contractor allowing the contractor to hook up the unit on Government property. This license can be incorporated into the contract. The agreement will require the contractor to remove the trailer(s) and restore the Government's property promptly upon termination of the license.

As a final reminder, when dealing with existing space, FMSD notification and approval is necessary before space changes or alterations which affect the classification of space can be made. Examples of space changes which require prior approval from my office would be the conversion of office space to laboratory, from laboratory to office, office to a computer facility, etc. Though you may have the legal basis to make these changes, prior approval from my office is required since real estate authority rests with FMSD.

If you have any questions concerning this matter, please contact Michael Penn, Chief, RESMB, on telephone (202) 260-2027.

PM-215:JLevin:hm:260-2022:04/08/93:G013NEMall:spellcheck:S:memo#3



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OCT 20 1993

OFFICE OF ACMINISTRATION AND RESOURCES MANAGEMENT

### MEMORANDUM

SUBJECT: Procedural Guidance For Expansion Of Office Space At

EPA Laboratories

FROM: Rich Lemley, Director

LFacilities Management and Services Division

TO: See Addressee List

We have received numerous questions concerning expansion/ replacement of office space at existing EPA laboratories. This memorandum is specifically directed at laboratories which support programs established under the Federal Water Pollution Control Act, Clean Air Act, and Comprehensive Environmental Response, Compensation, and Liability Act only and provides information and guidance to be used when submitting requests involving office space.

We define laboratories to include any space required to directly support the research/analytical function of the laboratory, provided, however, that the facility is intended and dedicated to a programmatic function authorized by one of these Acts. I can authorize the expansion of existing laboratory office space provided the request is justified by the master plan and the agency space utilization rate; i.e., the utilization rate based on the total number of people directly assigned to support the programmatic function at an existing laboratory. The request must also make sense in terms of maintaining the programmatic functional integrity of the laboratory.

Additionally, funds must be available. Projects of \$75,000 or less will be funded out of available program appropriations. Requests should contain certification from the financial officer that an appropriation exists which may be used for this purpose and that funds are available. Projects in excess of \$75,000, must be funded from the B&F appropriation and approval of expansion space requests will be on a case-by-case basis based on the availability of funds.

If you have any questions concerning this matter, please contact Michael Penn, Chief, Real Estate and Space Management Branch on telephone (202) 260-2022.





# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

2. Belie

MAR 3 1993

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

## MEMORANDUM

SUBJECT: Acquisition of Space for Short-Term Use

FROM: / Rich Lemley, Director

Facilities Management and Services Division

TO: Addresses (See attached list)

I want to take this opportunity to clarify EPA's policy regarding contracting for outside facilities. This includes, but is not limited to, conference and meeting rooms.

The Agency's policy, contained in EPA's Facilities Manual, Volume 4840-2, follows that contained in Federal Property Management Regulations, Temporary Regulation D-76. In brief, this regulation requires that a reasonable effort be made to utilize available government controlled facilities before contracting any outside facility. To meet this requirement, you should fix review your existing space to determine whether or not suitable space is available. If none is available, you must contact your GSA regional representative regarding space which may be available through their office. Document your files to show the date of contact and the name and position of the GSA individual contacted. At this point, if suitable Government controlled space is still not available, you may use your own procurement authority to acquire the space for a period not to exceed 180 days.

Although the regulation calls for the submission of an SF-81, our experience has been that, in cases involving short term needs, a telephone call to GSA will suffice. If an SF-81 is required, my staff will be glad to assist you in its preparation.

I am attaching the pertinent portions of 4840-2 and D-76 for your information. However, if you have any questions concerning this policy, please contact Michael Penn of my staff on 202-260-2022.

Attachments

# Addresses List:

Robert J. Goetzl, EPA Region I James Foley, EPA Region II John Krakowiak, EPA Region III Gary White, EPA Region IV Fred Woods, EPA RTP Thomas C. Wysoglad, EPA Region V Dave Cowles, EPA Cincinnati Gladean Butler, EPA Region VI Mark Hague, EPA Region VII Mel McCottry, EPA Region VIII Nick Tolve, EPA NEIC Joyce Byers, EPA Region IX Jonell Alamano, Region X Barbara Bonofiglio, EPA Headquarters Severa Wilson, EPA Headquarters Candace Castillo, EPA Headquarters ORD Michael E. Bower, EPA Office of Acquisition Management John Gherardini, EPA Office of Acquisition Management Don Sullivan, EPA CMD/RTP Mark Kellerman, EPA CMD/Cincinnati

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CALL STREET, STATE BAY CITY CERT **ATTACHMENT 9** 

BAY AREA CHAMBER OF COMMERCE P.O. BOX 836 BAY CITY, MI 46767



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November 23 19\_92

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PAY Two Thousand Two Hundred Twenty Dollars	- DOLLARS \$ 2.220.00

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Midland, Mi 48640

Bay area chamber of commerce

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# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

DEC-02 1988

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

Mr. Robert Fairweather Chief, Environment Branch Natural Resources Division Office of Management and Budget Washington, D.C. 20503

Dear Mr. Fairweather:

The purpose of this letter is to notify you of budget object class changes necessary for efficient implementation of EPA's Integrated Financial Management System (IFMS). The changes will create minor alterations in the information you receive, although no less information will be provided than you are receiving now.

We are planning an aggregation of the existing eighteen (18) budget object classes into six (6) more meaningful object classes for Funds Control and budgeting. This change in no way affects EPA's sub-object class accounting or our compliance with OMB's Circular A-11 Object Classification structure. This plan has received Agency-wide support and has been necessitated by our IFMS Implementation effort.

Enclosure A provides a brief explanation of the changes associated with this plan and Enclosure B provides a crosswalk from the old to the new structure.

Please call Rick Peterson at 382-4212 if you have questions or if we can provide any additional information.

Sincerely

Comptroller

Enclosures

### ENCLOSURE A

Currently, we manually review spending Appropriation/Allowance Holder level and withdraw obligational authority to an Allowance Holder if an overcommitted condition occurs. Lower budget levels such as program element (P.E.) and object class within an allowance can be monitored but not effectively controlled. IFMS allows for funds control down to the Appropriation/Allowance/P.E./Object Class level. We want to institute these controls. However, locking out on the existing eighteen (18) object classes currently used for budgeting, is Operating Plan object class spreads are best unrealistic. estimates and locking programs into eighteen (18) sub-estimates will delay spending actions and skyrocket reprogramming volume unnecessarily.

The planned budget object classes for the purpose of this funds control lockout feature are:

PC&B
Travel (Ceiling)
Site-Specific Travel (Non-Ceiling)
Other Expenses
Contracts/IAGs
Grants

Attachment B provides a crosswalk between the eighteen (18) current object classes and the six (6) planned. The OMB prescribed object classes are also displayed. The most notable aggregation is for other expenses. The planned change will preclude the need to lock programs into a controlled amount of expense dollars for such items as printing and supplies. Without this change, the Program Office would need to reprogram frequently as their estimates change.

Also included in this plan is the elimination of the terms "intramural" and "extramural" from the budgeting process. These are EPA expressions, based on object class definitions, which are not used government-wide and which are frequently misunderstood within EPA. For example, the distinction between intramural and extramural contracts is not made by A-11 which classifies all contracts and IAGs, "not otherwise classified", as object class 25.0. This change would group all object class 25.0 resources as A-11 does and eliminate the unnecessary distinction within EPA. Again, no accounting changes are planned, only budget object class groupings.

EPA products which will have minor changes to their appearance or production include the BUD 1 and BUD 1A forms in the OMB submission. The Object Classifications by Appropriations in the

President's Budget Appendix would still appear the same, however, the methodology used to estimate these amounts would be different. The change to each of these products is as follows:

BUD #1 Form

where in the past, budget authority has been displayed by intramural, extramural and total, it would now be displayed by specific appropriations with a total.

BUD 1A Form

 where narratives in the past sometimes referenced the BUD 1 extramural total as the program or research contract component, the narrative would now speak to specific amounts for program contracts associated with a planned activity.

President's

Budget Appendix - no visible change will occur but the manner in which the object class estimates are produced would be different. Currently, the prior year column is drawn from accounting data and the current year and outyear columns are educated estimates. The expanded appendix object class spread would be produced through a proration. six (6) aggregated budget object classes would be prorated into the OMB object classification from the prior year object class actual accounting data. We tested historical prior year actuals as a predictor of outyear object class estimates for a five (5) year period. The results showed this methodology to be an equally valid predictor for every year for every appropriation.

In terms of timing for implementation, we are planning no change at all for FY 1989. Operating Plan development is already well under way using the existing eighteen (18) budget object For FY 1990, we are already into formulation using the classes. eighteen (18) and would continue through the President's Budget Request in January 1989, using the existing structure. We would then aggregate to the six (6) object classes for Operating Plan development and budget execution. The FY 1991 budget would be both formulated and executed using six (6) object classes, for the first time.

# In conclusion, the features of this plan are:

- Closer conformance to A-11 object classification structure.
- o More accurate estimates of dollars by object class being provided to OMB than is available now.
- o An ability to explode from six (6) to eighteen (18) object classes based on current year or prior year actual prorations when needed.
- o No changes in our products to OMB before September 1989.
- o Only minor changes in our submissions to OMB when implementation does occur.
- o Improved funds control within the Agency.

# PROPOSED BUDGET OBJECT CLASS ROLLUP

47.

	Old (RMIS)			New (IFMS)
Codes	Ticle	Accounting Series	Codes	Title
41	PC&B	1100,1200,1300	10	PC&B
42	Travel	2100	21	Travel
1	6 2 3 4 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5		ر 28	Site-Specific Travel
43	Transportation	2200		
44	Rent	2300		
45	Printing	2400		
47	Supplies & Materials	2600	<b>&gt;</b> 27	Other Expenses
48	~	3100		
49	Land and Structures	3200		
50	Insurance and Indemnifications	4200	ر	
66	Other Contractual Services	2500	<b>.</b>	
61	IAGS	2500	<b>&gt;</b> 25	Contracts/IAGS
62	Program Contracts	2500		•
63/	ADP Contract Services	2500	_	
70	Research Grants	4100		
71	Demo Crants	4100	^ <u>^1</u>	Grants
72	Grants to States & Local	4100		
73	Other Grants	4100		
18			6	
On-Boat	On-Board and Workyears		On-Board	rd and Workyears
Code	Title		Code	Title
21	PFT		15	Lad
23	OPFT		16	OPFT
26 27	PETE	•	17 18	OPETE PETE:
•				

155

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ACTION: R TABLEID: ALLT USERID: RICK

\*\*\* ALLOWANCE INQUIRY TABLE \*\*\*

KEY IS BFYS, APPR, RPIO, ORG, PE, BOC : 91 APPR: 1B RPIO: 16

ORG: 540AAW PE: B4HX5A RPIO: 16 ( BOC: 25 US IND: A SPENDING CONTROL OVR:

APPROVED IND: Y POST QTR: 4 TRANS TYPES - PENDING: PS APPROVED: AP POSTED: 01

APPI	ROVED ALLOW AMT:	8,410,000.00	YTD ALLOW AMT:	8,410,000.00
YTD	UNLIQ COMM AMT:	0.00	AVAILABLE AMT:	7,699,669.96
YTD	UNLIQ OBLG AMT:	119.99	EXPENDED AMT:	710,210.05
EST	REIM TC/TT:		EST REIM AMT:	0.00
A	CT REIM AMT:	0.00 UND	ISTRIB EST REIM:	0.00
QTR	ORIG ALLOW AMT	PEND ALLOW AMT	APPRV ALLOW AMT	SUBALLOW AMT
1	4,850,000	0	4,850,000	0
2	3,560,000	. 0	3,560,000	0
3	0	0	0	0
4	0	0	0	0
			•	

QTR	UNLIQ COMM AMT	UNLIQ OBLG AMT	EXPENDED AMT	UNSUBALLOW AMT
1	0.00	0.00	0.00	4,850,000
2	0.00	0.00	0.00	3,560,000
3	426,554.44	0.00	0.00	0
4	-426,554.44	119.99	710,210.05	0
	و.		•	

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# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

JAN 1 | 1991

OFFICE OF AGMINISTRATION AND RESOURCES MANAGEMENT

## MEMORANDUM

SUBJECT: FY 1991 Advice of Allowance Letter

FROM:

Richard Endzen Director

Budget Division

TO:

Assistant Regional Administrators/Management

Division Directors (Regions I-X)

Senior Budget Officers

This memorandum is your formal notification of the Advice of Allowance levels based on FY 1991 VA, HUD-Independent Agencies Appropriations Bill (P.L. 101-507). The allowances reflect your Operating Plan including Congressional actions (add-ons and reductions).

# Impact of the FY 1991 Enacted Budget

The FY 1991 Enacted Budget incorporates Congressional changes to our FY 1991 President's Budget Request. The legislative history behind our appropriations, including provisions and language, are contained in <a href="The Analysis of EPA's FY 1991 Appropriations Bill">The Analysis of EPA's FY 1991 Appropriations Bill</a>, which will be provided to you under separate cover within the next few weeks. The analysis will constitute your notification of specific limitations and earmarks to your programs. It reflects in-depth congressional intent for the resources in your programs. As Allowance Holders, you are responsible for adhering to the provisions of the House, Senate, and the Conference reports. The importance of providing congressionally required reports in a timely manner cannot be understated.

The following are general limitations found in P.L. 101-507 that apply to the Agency.

# Reprogramming in Excess of \$250,000

This year the Appropriations committees have not exempted EPA from the standard appropriation language limiting reprogrammings into or cut of any program element to \$250,000 or more. There are no exceptions to this limitation and the Committee

staff has reiterated their desire to closely monitor this limitation. We have appealed this decision and will notify you if we are successful in our attempt to return to the \$500,000 limitation.

# 2. Personnel Compensation and Benefit (PC&B) Reprogramming

A General Provision of the Bill states that no part of any appropriation for PC&B may be used for any other object class. This limitation established a floor on Agency PC&B. Funds may be moved into PC&B using IFMS reprogramming process. Later in the year, if the Agency is above the PC&B floor and your workyears are fully funded, in total, we will approve reprogramming requests to move excess funds out of PC&B.

## 3. Repair and Improvement Projects

Specific language in the Bill allows \$75,000 for Repair and Improvement (R&I) projects that can be funded from the Salaries and Expenses appropriation. R&I projects in excess of \$75,000 must be funded from the Buildings and Facilities (B&F) appropriation.

# Advices of Allowance/Operating Plan

The FY 1991 Operating Plan, as reflected in the attached Advices of Allowances (Attachment A) and in the Integrated Financial Management System (IFMS), has not yet received Congressional approval. Any changes raised by the Committees will be discussed with the appropriate NPMs. The latest Operating Plan can always be viewed on screen on the (IFMS) ALLT table or through reports pulled from the report menu. Your Advice of Allowance is shown on the SALC Table in IFMS and can be viewed or printed out with spending to date included. The hard copy quarterly Advice of Allowance is for the start of the second quarter on January 1, 1991.

The IFMS flag which required budget review of all reprogrammings into the grants object class has been removed for FY 91. The audit trail that the restriction provided in FY 90 was essential to the issue of legal implications imposed by authorizing levels. The authorized funding levels, including grants, were printed and circulated during FY 90 and knowledge of those levels should be incorporated into your budget planning in FY 1991.

# Agency Ceilings

While the Agency must operate under Congressional and/or OMB ceilings, each RPIO/Region must also operate within their subceilings. You must operate under the ceilings for workyears, travel, and Superfund and LUST administrative dollars as well as, quarterly apportioned dollar totals. IFMS will monitor ceilings in the Operating Plan but you must monitor your spending against the plan.

Attachment B provides the current ceilings for each RPIO. Please review these totals carefully and reprogram in the event that your Operating Plan already exceeds a ceiling.

The following are brief discussions of selected ceilings:

- I. <u>Workyears</u>: Workyear ceilings are issued by appropriation and RPIO and are not transferrable between accounts.
- II. <u>Travel</u>: There are two budget object classes for travel; ceiling travel (21) and site-specific travel (28). Site-specific travel can only be used for site-related travel for Superfund and RCRA (S&E). The travel budget object class (21) should not exceed your travel ceiling. To obtain additional travel ceiling requires a written request to the Budget Division. Approval must be received <u>before</u> incurring obligations. After approval is received a reprogramming document may be entered into IFMS to reprogram travel dollars. Reprogrammings which transfer travel ceiling between RPIOs must be clearly stated on the reprogramming document.
- III. Administrative Expense Ceilings: EPA's FY 1991 enacted appropriation includes a limitation on administrative expenses in the Superfund and LUST appropriations.

The ceiling encompasses the following object classes for which a crosswalk is provided between IFMS budget object classes and the IFMS Finance sub-object class accounting series.

CATEGORY/OBJECT CLASS	BUDGET	FINANCE
Included in the ceiling:		
Personnel compensation & benefits	10	11.00 12.00 13.00
Travel & transportation of persons Travel & trans. of perssite-related	21 28	21.00
Transportation of things Rent, communications & utilities Printing & reproduction Supplies & materials Equipment Land & structures Insurance claims & indemnities	<b>27</b>	22.00 23.00 24.00 26.00 31.00 32.00 42.00
Excluded from the ceiling: Other contractual services R&D contracts Inter-agency agreements Program contracts ADP contracts	(25)	25.00
Research grants Demonstration grants Grants to State & local governments Other grants	41	41.00

The administrative ceiling is equal to the total dollars in the Operating Plan administrative object classes. Please monitor your actual obligations for these object classes to ensure that they do not exceed your administrative ceiling. Unlike travel ceiling, if additional administrative ceiling is needed a request to the Budget Division can be made through an IFMS reprogramming document. If there is sufficient ceiling available to cover your reprogramming request, the Budget Division will approve and update your reprogramming in IFMS. The approval of the reprogramming will constitute the approval of additional ceiling.

Superfund and LUST reprogrammings should net to zero between administrative expenses object classes unless you are requesting additional ceilings. Please note that Superfund site-related travel, which does not have to be covered by your travel ceiling, must be covered by your administrative ceiling.

IV. R & D Appropriation Expense Ceiling: EPA's FY 1991 enacted Research and Development appropriation limits the agency to \$34,600,000 as the amount available for laboratory equipment, supplies, and other operating expenses in support of research and development. No expenses may be charged to ORD's Salaries and Expenses account in FY 91, only PC&B and travel.

# Tracking Specifically Funded Items

EPA's policy and procedure for tracking specifically funded items was issued under Comptroller Policy Announcement No. 91-01 (Attachment C). We believe this process will allow the Agency to track the budgeting and spending status of items of add-ons and other items of particular interest more efficiently.

## Construction Grants

Construction Grant Advice of Allowance for FY 1991 New Obligational Authority (NOA) was released to the Regions on November 20, 1990. As a result of changes made to the reprogramming process we were able to enter these funds directly at the state level. In addition, we have developed a new IFMS coding system that will identify issuance by type of funds, such as, carryover, reallotment, recoveries, and NOA. These changes will greatly enhance the ability to track issuance of funds, as well as providing direct control of state levels to the Regions. Attachment D provides detailed information on the procedures for implementing these changes.

# Personnel Security Clearances

As a reminder, individual Allowance Holders must assume the cost of personel security clearances for their respective offices.

## IFMS Operating Plan and Reprogramming

We have obtained some major enhancements to the IFMS reprogramming process for FY 1991. Attachment E highlights some of the new procedures for utilizing the adaptations.

Thank you for your patience and cooperation during this difficult start of the new fiscal year. In an effort to keep the appropriate audience informed, please provide a copy of this memorandum to your Allowance Holders and appropriate program and administrative staff.

Any questions concerning this memorandum should be directed to your assigned Budget Control Section contact.

Jean Price	382-5672	OARM
Albert Brown	382 <b>-</b> 4207	Regions VI, VIII, IX, X OPTS, OA, OIA
Tricia Gaghan	382-4210	Regions II, V, VII OW, OSWER, OAR, OIG, OE
Peggy Maclin	382-4213	Regions I, III, IV OGC, OPPE, ORD

# Attachments

cc: Harvey Pippen
David J. O'Connor
Kenneth F. Dawsey
Dave Rvan

Dave Ryan Rich Bashar

SON AGENCY	(VREND-91)
ENVIRONMENTAL (	FY 91 YEAR-END SOF 1 ONLY

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			-	50	
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OBJECT CLASS DESCRIPTION	ST TME, NON CLG EMP, GW WW, VV OVERTIME PAV, (PFT) OTHER PERSONNEL COMP SPECIAL PERSONAL SVC PAVMENT INTERGOVRHMNTL PERSONNEL ACT TOTAL OCMAJ	SOCIAL SEC-FICA,CIV PFT SOC SEC CONT,CIV NON-CLG EMP RETIREMENT CON NON-CLG EMPL INSURANCE CONTR,NON-CLG EMPL TOTAL DCMAJ	PER DIEM & SUBSISTENCE-ALL O COMMON CARRIER PRIVATIELY OWNED VEHICLE COMMERCIAL RENTAL GSA CAR RENTAL INCIDENTAL COSTS PER DIEM&SUBST SITE REL TRVL COM CARRIER SITE REL TRVEL PRIV OWNED VEH SITE TRAVEL COM RENTAL SITE REL TRAVEL INCIDENTAL COSTS SITE TRAVEL LOCAL TRAVEL TRAVEL	TRANP OF THGS(100 OR LESS)  LAND & STRUCTURES  ADP CMPUTER SYS & EQUIP  UTILITY SERVICES  PENALTY MAIL	PRINTG & REPRO OF INFO MATE FEDERAL REGISTER PRINTING TOTAL OCMAJ ADP CONTRACTS RED OR ENH SYS ADP USER OPER SUP MAINTENANCE DATA PROC EQUIP
OBJT	1151 1151 1165 1181	1210 1240 1241 1242	2113 2113 2114 2121 2123 2123 2123 2123	2209 2301 2303 2320 2320	2401 2402 2402 2513 2516 2516 2519 2519
OBJECT CLASS DESCRIPTION	PERSONNEL COMPENSATION	PERSONNEL BENEFITS	SHAVEL & TRAHS OF PERSOMS	TRANSPORTATION OF THINGS RENT COMM & UTILITIES	PRINTING & REPRODUCTION OTHER CONTRACTURAL SERVICES
E S	-	12	2	22 23 23	2 2 2 2

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# APPENDIX IV

## REPORT DISTRIBUTION

# Office of Inspector General

Inspector General (2410)

Deputy Inspector General (2410)

# Headquarters Office

Deputy Administrator (1102)

Acting Assistant Administrator for Administration and Resources Management (3101)

Acting Chief Financial Officer (3101)

General Counsel (2310)

Agency Follow-up Official (3101), Attn: Acting Chief Financial Officer

Agency Follow-up Coordinator (3304), Attn: Acting Director, Resource Management Division

Comptroller (3301)

Director, Financial Management Division (3303F)

Director, Budget Division (3302)

Director, Program and Policy Coordination Office (3102)

Director, Office of Administration (3201)

Director, Facilities Management and Services Division (3204)

Director, Office of Information Resources Management (3401)

Director, Office of Acquisition Management (3801F)

Special Assistant, Office of Acquisition Management (3801F)

Director, National Data Processing Division (MD-34)

Director, Executive Support Office (1104)

Director. Office of Grants and Debarment (3901F)

Associate General Counsel for Finance and Operations (2376)

Associate Administrator for Congressional and Legislative Affairs (1301)

Associate Administrator for Communications, Education, and Public Affairs (1701)

Headquarters Library (3304)

# Regional Offices

Regional Administrator, Region 1

Regional Administrator, Region 2

Regional Administrator, Region 3

Regional Administrator, Region 4

Regional Administrator, Region 5

Regional Administrator, Region 6

Regional Administrator, Region 7

Regional Administrator, Region 8

Regional Administrator, Region 9

Regional Administrator, Region 10

# **External**

General Accounting Office

Office of Management and Budget

General Services Administration